FORM 8-K

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Mailing Address
350 FIFTH AVENUE
21ST FLOOR
NEW YORK NY 10118

Business Address
350 FIFTH AVENUE
21ST FLOOR
NEW YORK NY 10118
646-419-4452

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **May 6, 2022**

Shutterstock, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-35669**	**80-0812659**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

350 Fifth Avenue, 21st Floor
New York, NY 10118
(Address of principal executive offices, including zip code)

(646) 710-3417
(Registrant's telephone number, including area code)

Not applicable
(Former name, former address and former fiscal year, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, $0.01 par value per share	**SSTK**	**New York Stock Exchange**

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

☐ Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

On May 11, 2022, Shutterstock, Inc. (the "Company"), completed its acquisition of Pond5, Inc. ("Pond5") pursuant to that certain Agreement and Plan of Merger, dated May 10, 2022 (the "Merger Agreement"), by and among the Company, Piranha Merger Sub, Inc., a wholly owned subsidiary of the Company (the "Merger Sub"), Pond5, and Fortis Advisors LLC, solely in its capacity as "Shareholders' Representative," in connection with which Merger Sub merged with and into Pond5, with Pond5 surviving the merger as a wholly owned subsidiary of the Company (the "Merger"). Capitalized terms used but not defined herein have the meanings assigned to them in the Merger Agreement.

The aggregate consideration payable by the Company in connection with the Merger is $210.0 million in cash (subject to certain customary working capital and other adjustments in accordance with the terms of the Merger Agreement).

The Merger Agreement contains customary representations, warranties and covenants by the Company, Merger Sub and Pond5 that are subject, in some cases, to specified exceptions and qualifications contained in the Merger Agreement. The Company has obtained a representation and warranty insurance policy to insure against certain losses arising from breaches of, or inaccuracies in, the representations and warranties of Pond5 in the Merger Agreement, which policy is subject to a retention amount, exclusions, policy limits and certain other terms and conditions. Except with respect to losses arising from Fraud (as defined in the Merger Agreement) and claims for indemnification arising out of certain specified matters, the Company's recourse against the Shareholders after Closing with respect to breaches of Pond5's representations and warranties will be limited to an indemnity escrow in the amount of $1.05 million and may be subject to a deductible and other limitations set forth in the Merger Agreement.

The Merger Agreement is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference. The foregoing summary has been included to provide investors and security holders with information regarding its terms, does not purport to be complete and is subject to, and is qualified in its entirety by, the full text, terms and conditions of the Merger Agreement. It is not intended to provide any other factual information about the Company, Merger Sub or Pond5 or to modify or supplement any factual disclosures about the Company in its public reports filed with the U.S. Securities and Exchange Commission (the "SEC"). The Merger Agreement includes representations, warranties and covenants of the parties thereto made solely for purposes of the Merger Agreement and which may be subject to important qualifications and limitations agreed to by the parties thereto in connection with the negotiated terms of the transaction and the Merger Agreement. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to the Company's SEC filings or may have been used for purposes of allocating risk among the parties thereto rather than establishing matters as facts.

Credit Agreement

On May 6, 2022 (the "Effective Date"), Shutterstock, Inc. (the "Company") entered into a credit agreement (the "Credit Agreement") among the Company, as borrower, certain direct and indirect subsidiaries of the Company as Subsidiary Guarantors, the Lenders party thereto, and Bank of America, N.A., as Administrative Agent for the lenders. The Credit Agreement provides for a five-year unsecured revolving loan facility in an aggregate principal amount of $100.0 million. The Credit Agreement provides for a letter of credit subfacility and a swingline facility. The Credit Agreement also permits, subject to the satisfaction of certain conditions, up to $100.0 million of additional revolving loan commitments from one or more of the existing lenders or other lenders (with the consent of the Administrative Agent).

At the Company's option, revolving loans accrue interest at a per annum rate based on either (i) the base rate plus a margin ranging from 0.125% to 0.500%, determined based on the Company's consolidated leverage ratio or (ii) the Term SOFR rate (for interest periods of 1, 3 or 6 months) plus a margin ranging from 0.125% to 1.500%, determined based on the Company's consolidated leverage ratio, plus a credit spread adjustment. The Company is also obligated to pay other customary closing fees, commitment fees and letter of credit fees for a facility of this size and type.

On the Effective Date, the Company borrowed $50 million for use in connection with the acquisition described under "Merger Agreement" above and for general corporate purposes. The Company may borrow, repay and reborrow funds under the revolving loan facility until May 6, 2027, at which time the revolving loan facility will terminate, and all outstanding revolving loans, together with all accrued and unpaid interest, must be repaid.

The Credit Agreement contains customary affirmative and negative covenants, including covenants limiting the ability of the Company and its subsidiaries to, among other things, incur debt, grant liens, undergo certain fundamental changes, make investments, make certain restricted payments, dispose of assets, enter into transactions with affiliates, and enter into burdensome agreements, in each case, subject to limitations and exceptions set forth in the Credit Agreement. The Company is also required to maintain compliance with a consolidated leverage ratio and a consolidated interest coverage ratio, in each case, determined in accordance with the terms of the Credit Agreement.

The Credit Agreement also contains customary events of default that include, among other things, certain payment defaults, cross defaults to other indebtedness, inaccuracy of representations and warranties, covenant defaults, change of control defaults, judgment defaults, and bankruptcy and insolvency defaults. If an event of default exists, the Agent on behalf of the lenders may require immediate payment of all obligations under the Credit Agreement and may exercise certain other rights and remedies provided for under the Credit Agreement, the other loan documents and applicable law. Under certain circumstances, a default interest rate will apply on all obligations during the existence of an event of default under the Credit Agreement at a per annum rate equal to 2.00% above the applicable interest rate.

The foregoing description of the Credit Agreement is only a summary and is qualified in its entirety by reference to the full text of the Credit Agreement, which is attached as Exhibit 10.1 hereto and is hereby incorporated into this Item 1.01 by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth in Item 1.01 is incorporated by reference into this Item 2.01.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 is incorporated by reference into this Item 2.03.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On May 9, 2022, the Company's board of directors (the "Board") appointed Paul J. Hennessy as Chief Executive Officer of the Company, effective July 1, 2022. Mr. Hennessy, age 57, has served as a member of our Board since April 2015. Since June 2016, he has served as Chief Executive Officer and member of the Board of Directors of Vroom, Inc., an online pre-owned car retailer. Prior to joining Vroom, from April 2015 through June 2016, he served as Chief Executive Officer of priceline.com, a provider of online travel and travel related reservation and search services. From November 2011 to March 2015, he served as Chief Marketing Officer of Booking.com, an online booking accommodations provider. From July 2006 to October 2011, he was Chief Distribution Officer of priceline.com. The selection of Mr. Hennessy to serve as Chief Executive Officer was not pursuant to any arrangement or understanding with respect to any other person. In addition, there are no family relationships between Mr. Hennessy and any director or other executive officer of the Company, and there are no related persons transactions between the Company and Mr. Hennessy reportable under Item 404(a) of Regulation S-K.

On May 8, 2022 the Company entered into an employment agreement (the "Employment Agreement") with Mr. Hennessy under which he will serve, on an "at will" basis, as the Chief Executive Officer of the Company, beginning on July 1, 2022. Mr. Hennessy's base salary will be $700,000 per annum, and he will be eligible to earn an annual cash incentive bonus with an initial target amount equal to 100% of his annual base salary. Subject to the approval of the Board, following Mr. Hennessy's start date, the Company will grant an award of restricted Company stock units ("RSUs") to him having a value equal to $15 million (determined based on the average closing price of Company stock during the thirty day period prior to the grant date). The RSUs will vest 33% on each of the first and second anniversaries of the grant date and 34% on the third anniversary, provided Mr. Hennessy's employment continues through the applicable vesting date. Subject to the approval of the Board, the Company will also grant an award of performance Company restricted stock units ("PSUs") to him with a fair market value equal to $15 million (determined based on the average closing price of Company stock during the thirty day period prior to the grant date). The PSUs will provide for vesting on July 1, 2025, contingent on achievement of targets and completion of service requirements to be established and approved by the Board prior to December 31, 2022.

In the event the Company terminates Mr. Hennessy's employment without cause (as defined in the Employment Agreement) and not within twelve months following a change in control, the Company will continue to pay his base salary for eighteen months following termination, he will be reimbursed for certain medical insurance premiums for up to eighteen months, 100% of the unvested RSUs will immediately vest, a pro-rated portion of the PSUs ultimately earned based on achievement of the performance targets will vest, and he will receive a pro-rated annual bonus for the year of termination.

In the event the Company terminates Mr. Hennessy's employment without cause or he terminates his employment for good reason (as defined in the Employment Agreement), in either case within twelve months following a change in control, he will receive a lump sum payment equal to eighteen months' of his base salary, he will be reimbursed for certain medical insurance premiums for up to twelve months, unless otherwise set forth in a PSU award agreement, all of his unvested equity awards will immediately vest, and he will receive an immediate lump sum payment equal to his target bonus amount for the year of termination.

The receipt of any severance benefits is conditioned on Mr. Hennessy's entry into a separation agreement, including a release of any claims against the Company, and compliance with a non-disclosure agreement providing for confidentiality obligations, non-solicitation and non-competition covenants and intellectual property assignments.

The foregoing description of the Employment Agreement is qualified in its entirety by reference to the full text of the agreement, which is attached hereto as Exhibit 10.2.

As a result of Mr. Hennessy's appointment as Chief Executive Officer, he will no longer be "independent" as that term is defined under the applicable rules and regulations of the Securities and Exchange Commission (the "SEC") and the listing requirements and rules of the New York Stock Exchange (the "NYSE"). Accordingly, he has resigned from the Company's compensation committee and audit committee, effective May 9, 2022. The Board has appointed Rachna Bhasin to serve on the Company's audit committee, effective May 9, 2022. The Board, in its business judgment, has determined that Ms. Bhasin meets the independence criteria prescribed by the Securities Exchange Act of 1934 and SEC rules and regulations and meets the NYSE's financial literacy requirements for audit committee members.

Item 7.01 Regulation FD Disclosure.

On May 11, 2022, the Company issued a press release regarding its acquisition of Pond5. A copy of the press release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On May 11 2022, the Company posted a slide presentation regarding its acquisition of Pond5 to the Company's website at https://investor.shutterstock.com. The slide presentation is attached hereto as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

On May 11, 2022, the Company issued a press release regarding its appointment of Mr. Hennessy as Chief Executive Officer. A copy of the press release is attached hereto as Exhibit 99.3 to this Current Report on Form 8-K and is incorporated herein by reference.

The information furnished pursuant to Items 7.01, including Exhibits 99.1, 99.2 and 99.3, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

2.1*	Agreement and Plan of Merger, dated May 10, 2022.
10.1*	Credit Agreement, dated as of May 6, 2022, by and among Shutterstock, Inc., as borrower, certain subsidiary guarantors, certain financial institutions, as lenders, and Bank of America, N.A., as administrative agent for such lenders.
10.2	Employment Agreement between Paul J. Hennessy and Shutterstock, Inc. dated May 8, 2022.
99.1	Press release entitled "Shutterstock Acquires Pond5, the World's Largest Video Marketplace" dated May 11, 2022.
99.2	Slide presentation entitled "Shutterstock Acquisition of Pond5" dated May 11, 2022.
99.3	Press release entitled "Shutterstock Appoints Paul Hennessy Chief Executive Officer" dated May 11, 2022.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

* Certain exhibits and schedules have been omitted, and the Company agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted exhibits upon request. Pursuant to Item 601(a)(6) of Regulation S-K, certain information has been redacted or omitted and marked by brackets and asterisks.

FORWARD-LOOKING STATEMENTS

This Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact are forward-looking. Examples of forward-looking statements include, but are not limited to, statements regarding guidance, industry prospects, future business, future results of operations or financial condition, future dividends, our ability to consummate acquisitions and integrate the businesses we have acquired or may acquire into our existing operations, new or planned features, products or services, management strategies, our competitive position and the COVID-19 pandemic. You can identify forward-looking statements by words such as "may," "will," "would," "should," "could," "expect," "aim," "anticipate," "believe," "estimate," "intend," "plan," "predict," "project," "seek," "potential," "opportunities" and other similar expressions and the negatives of such expressions. However, not all forward-looking statements contain these words. Forward-looking statements are subject to known and unknown risks, uncertainties and other factors that could cause our actual results to differ materially from those expressed or implied by the forward-looking statements contained herein. Such risks and uncertainties include, among others, those discussed under the caption "Risk Factors" in our most recent Annual Report on Form 10-K, as well as in other documents that the Company may file from time to time with the Securities and Exchange Commission. As a result of such risks, uncertainties and factors, Shutterstock's actual results may differ materially from any future results, performance or achievements discussed in or implied by the forward-looking statements contained herein. The forward-looking statements contained in this Form 8-K are made only as of this date and Shutterstock assumes no obligation to update the information included in this Form 8-K or revise any forward-looking statements, whether as a result of new information, future developments or otherwise, except as required by law.

SIGNATURE

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

SHUTTERSTOCK, INC.

Dated: May 11, 2022

By: /s/ Jarrod Yahes
Jarrod Yahes
Chief Financial Officer

Exhibit 2.1

EXECUTION VERSION
CONFIDENTIAL

AGREEMENT AND PLAN OF MERGER

dated as of

May 10, 2022,

by and among

SHUTTERSTOCK, INC.

PIRANHA MERGER SUB, INC.,

POND5, INC.,

and

FORTIS ADVISORS LLC
(solely in its capacity as Shareholders' Representative)

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of May 10, 2022 (this "***Agreement***"), is entered into by and among Pond5, Inc., a Delaware corporation (the "***Company***"), Shutterstock, Inc., a Delaware corporation ("***Parent***"), Piranha Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Parent ("***Merger Sub***"), and Fortis Advisors LLC, a Delaware limited liability company, solely in its capacity as representative of the Shareholders (as defined herein) (the "***Shareholders' Representative***") (each of the foregoing, a "***Party***" and collectively, the "***Parties***").

RECITALS

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth herein (the "***Merger***");

WHEREAS, in the Merger, upon the terms and subject to the conditions of this Agreement, each share of Common Stock and Preferred Stock and each Vested Company Stock Option (each as defined herein and collectively, the "***Shares***") will be converted into the right to receive the Merger Consideration (as defined herein).

WHEREAS, the board of directors of the Company (the "***Company Board of Directors***") has unanimously (a) determined that it is in the best interests of the Company and its shareholders, and declared it advisable, to enter into this Agreement with Parent and Merger Sub, (b) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (c) resolved, subject to the terms and conditions set forth in this Agreement, to recommend adoption of this Agreement by the shareholders of the Company;

WHEREAS, the respective boards of directors of Parent and Merger Sub have, on the terms and subject to the conditions set forth in this Agreement, approved this Agreement;

WHEREAS, concurrent with the execution of this Agreement, each Specified Individual has executed a Specified Employment Letter, to be effective upon and subject to the consummation of the Merger; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the transactions contemplated by this Agreement and also to prescribe certain conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. The terms defined in this Article I, whenever used herein (including the Exhibits and Schedules hereto), shall have the following meanings for all purposes of this Agreement:

"***Accounting Policies***" means in accordance with GAAP as in effect on the date of this Agreement.

"***Accounts Receivable***" means all of the accounts receivable of the Company and its Subsidiaries immediately prior to the Effective Time determined in accordance with Accounting Policies.

"***Acquisition Proposal***" means any inquiry, proposal or offer from any Person (other than Parent or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (iii) the sale, lease, exchange or other disposition of any portion of the Company's properties or assets.

"***Action***" means any notice of noncompliance or violation, or any claim, demand, charge, action, suit, litigation, audit, settlement, complaint, stipulation, assessment or arbitration, or any request (including any request for information), inquiry, hearing, proceeding or investigation, by or before any Governmental Entity.

"***Advisory Group***" has the meaning set forth in Section 11.17(c) hereof.

"***Affiliate***" of a Person means any other Person that directly or indirectly through one or more intermediaries' controls, is controlled by, or is under common control with such Person. The term "***control***" (including the terms "***controlled by***" and "***under common control with***") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or as may otherwise be defined by the Code or 13 C.F.R. § 121 *et seq*.

"***Affiliate Contract***" has the meaning set forth in Section 4.21 hereof.

"***Aggregate Option Exercise Price***" means the sum of the cash exercise prices that would be payable upon exercise of all Vested Company Stock Options by all holders of Vested Company Stock Options immediately prior to the Effective Time.

"***Aggregate Series A Liquidation Preference***" means an amount equal to the product of (i) the number of shares of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time multiplied by (ii) the Series A Per Share Liquidation Preference.

"***Aggregate Series A-1 Liquidation Preference***" means an amount equal to the product of (i) the number of shares of Series A-1 Preferred Stock issued and outstanding immediately prior to the Effective Time multiplied by (ii) the Series A-1 Per Share Liquidation Preference.

"***Agreement***" has the meaning set forth in the Preamble.

"***Allocation Schedule***" means the allocation schedule setting forth the following information: (i) each Shareholder's name and email address, (ii) the number of shares of Common Stock held as of immediately prior to the Effective Time by such Shareholder, (iii) the number of shares of Preferred Stock (specifying the number of shares of each class and series of Preferred Stock) held as of immediately prior to the Effective Time by such Shareholder, (iv) the number of shares of Common Stock subject to Vested Company Stock Options held as of immediately prior to the Effective Time by such Shareholder and the exercise price(s) of such Vested Company Stock Option, (v) the Per Share Amount, the Series A Per Share Amount, the Series A-1 Per Share Amount and the Option Per Share Amount, (vi) the Company Common Stock Per Share Contribution Amount, the Series A Per Share Contribution Amount, the Series A-1 Per Share Contribution Amount and the Option Per Share Contribution Amount, (vii) the Aggregate Series A Liquidation Preference and the Aggregate Series A-1 Liquidation Preference, (viii) such Shareholder's Pro Rata Portion, Capital Stock Pro Rata Portion and Option Pro Rata Portion, each expressed as a percentage, (ix) the number of Fully Diluted Shares, (x) the Aggregate Option Exercise Price, (xi) the Contribution Amount and (xii) the Contribution Percentage.

"***Ancillary Agreements***" means the Escrow Agreement, the Paying Agent Agreement and any certificate delivered pursuant to this Agreement.

"***Audited Financial Statements***" has the meaning set forth in Section 4.4(a).

"***Balance Sheet***" has the meaning set forth in Section 4.4(a).

"***Balance Sheet Date***" has the meaning set forth in Section 4.4(a).

"***Breach of Security***" has the meaning set forth in Section 4.29(c) hereof.

"***Business***" means the business owned or operated, in whole or in part, by the Company and/or its Subsidiaries as of the Closing Date, including operating an online marketplace for royalty-free media.

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are required or authorized by law to be closed.

"***Cancelled Shares***" has the meaning set forth in Section 2.4(a) hereof.

"***Capital Stock***" means each outstanding share of Common Stock and Preferred Stock, and excluding for the avoidance of doubt, shares of Common Stock issuable upon exercise of Company Common Stock Options.

"***Capital Stock Payment Condition***" has the meaning set forth in Section 2.7(c)(i).

"***Capital Stock Pro Rata Portion***" means, with respect to each Shareholder holding Capital Stock, the quotient obtained by dividing (i) the Merger Consideration payable at Closing with respect to such Shareholder's shares of Capital Stock divided by (ii) the aggregate Merger Consideration payable at Closing with respect to all Shareholders.

"***Cash and Cash Equivalents***" means, without duplication, all cash and cash equivalents of the Company and its Subsidiaries determined in accordance with the Accounting Policies, including (x) cash, checks, money orders, marketable securities, short-term instruments and other cash equivalents, funds in time and demand deposits or similar accounts, and any inbound but uncleared deposits or checks or other payments in transit (other than inbound wire transfers or cash held by payment processors) and (y) cash security deposits, cash used to secure collateral accounts, cash pursuant to letters of credit used to secure leased Real Property and other cash collateral posted with vendors, landlords, and other parties; provided, that "Cash and Cash Equivalents" shall be calculated net of (A) restricted balances (including outstanding checks, outgoing wire transfers, bond guarantees, collateral reserve accounts, amounts held in escrow and deposits or other amounts related to work or services not yet performed), (B) amounts that are not freely usable, distributable or transferable and (C) with respect to any amounts in a non-U.S. Subsidiary of the Company, Taxes, if any, that would be imposed on a distribution of such amounts from such Subsidiary to the Company.

"***Certificate of Merger***" has the meaning set forth in Section 2.1(a).

"***Change of Control***" means, with respect to any Person, any transaction that results in any Person or group of Persons acquiring directly or indirectly: (i) beneficial ownership of securities of such Person possessing a majority of the voting power (whether by merger, consolidation or sale of securities or equity interest), or (ii) all or substantially all of the assets of such Person.

"***Claim Notice***" has the meaning set forth in Section 9.6(a) hereof.

"***Closing***" means the closing of the transactions contemplated by this Agreement which shall occur on the Closing Date.

"***Closing Balance Sheet***" has the meaning set forth in Section 3.3(b).

"***Closing Cash***" means the aggregate amount of Cash and Cash Equivalents of the Company and its Subsidiaries as of the Measurement Time.

"***Closing Date***" has the meaning set forth in Section 2.11.

"***Closing Date Purchase Price***" means $210,000,000 less, without duplication, the aggregate amount of (i) the Estimated Closing Indebtedness of the Company and its Subsidiaries and (ii) the Estimated Company Transaction Expenses plus (iii) the Estimated Closing Cash minus (iv) the amount, if any, by which the Target Net Working Capital exceeds the Estimated Net Working Capital plus (v) the amount, if any, by which the Estimated Net Working Capital exceeds the Target Net Working Capital.

"***Closing Indebtedness***" means the aggregate amount of Indebtedness of the Company and its Subsidiaries as at the Measurement Time (except with respect to the Tax Liability Amount, which shall be measured as of the end of the Closing Date).

"***Closing Statement***" has the meaning set forth in Section 2.7(a).

"***Closing Working Capital***" means the Net Working Capital as of the Measurement Time.

"***Code***" means the United States Internal Revenue Code of 1986, as amended from time to time.

"***Company Common Stock Per Share Contribution Amount***" means, with respect to each share of Common Stock, an amount equal to: (i) the Per Share Amount *multiplied* by (ii) the Contribution Percentage.

"***Commerce***" has the meaning set forth in the definition of "Customs and International Trade Laws" hereof.

"***Commercial Tax Obligation***" means any customary obligation to assume responsibility, or reimburse another Person, for any Taxes that is part of a larger commercial agreement not primarily related to Taxes (excluding any commercial agreement to sell or otherwise dispose of (1) any equity of any entity or (2) any assets other than inventory sold in the ordinary course of the Company's business), such as an obligation of a borrower to gross up a lender under a credit agreement or a tenant's obligation to make tax escalation payments to a landlord.

"***Common Stock***" means the common stock, par value $0.001 per share, of the Company.

"***Company***" has the meaning set forth in the Preamble.

"***Company Accrued Bonus Amount***" means the accrued amount of bonuses of the Company and its Subsidiaries as accrued in the Company's general ledger (260000 – Accrued Bonus) as of May 1, 2022.

"***Company Board of Directors***" has the meaning set forth in the Recitals.

"***Company Charter***" means the Second Amended and Restated Certificate of Incorporation of the Company filed on June 25, 2014, as amended by that certain Certificate of Amendment of the Second Amended and Restated Certificate of Incorporation of Pond5, Inc. filed on November 6, 2015, and that certain Certificate of Amendment to Second Amended and Restated Certificate of Incorporation of Pond5, Inc., filed on May 12, 2016.

"***Company Common Stock Option***" means each vested and unvested, unexpired and unexercised option to purchase Shares of Common Stock.

"***Company Disclosure Schedules***" has the meaning set forth in Article IV.

"***Company Employees***" has the meaning set forth in Section 6.10.

"***Company Indemnified Party***" has the meaning set forth in Section 6.7(a) hereof.

"***Company Insurance Policies***" has the meaning set forth in Section 4.13.

"***Company Intellectual Property Rights***" has the meaning set forth in Section 4.8(c).

"***Company IT Systems***" means all information technology systems, networks, hardware, computers, Software, servers, workstations, routers, hubs, switches, data communication lines, object code, binary code, source code, libraries, routines, subroutines or other code (including commercial, open-source and freeware software), firmware, middleware, applications, and other information technology equipment and services used or held for use by the Company and its Subsidiaries in the operation of the Business, together with all associated documentation owned or used by or on behalf of the Company or its Subsidiaries in the conduct of the Business.

"***Company Products***" means all products and services that are currently commercially provided, made available, marketed, distributed, offered online, offered for sale, sold, leased, loaned, or licensed to third parties by or on behalf of the Company or its Subsidiaries.

"***Company Shareholder Approvals***" means (i) the affirmative vote of a majority of the outstanding shares of Capital Stock, voting together as a single class on an as-converted to Common Stock basis and (ii) the affirmative vote of the holders of at least sixty-three percent (63%) of the outstanding shares of Series A Preferred Stock and Series A-1 Preferred Stock, voting separately as a single class on an as-converted to Common Stock basis.

"***Company Transaction Expenses***" means, to the extent not paid by the Company prior to Closing, (a) all costs, fees and expenses incurred by the Company or any of its Subsidiaries at or prior to the Effective Time (including those of any Shareholder or the Shareholders' Representative for which the Company or any of its Subsidiaries is responsible), or pursuant to any Contract or other arrangement entered into at or prior to the Effective Time, related to the transactions contemplated by this Agreement or any of the Ancillary Agreements (or any other sale, debt, or equity financing process conducted or pursued by any of the Company or its Subsidiaries), whether payable prior to, at or after the Closing, including (i) costs, fees and expenses of investment bankers (including the brokers referred to in Section 4.16), attorneys, accountants and other consultants and advisors, (ii) all retention (other than any amounts that are payable at the direction of Parent or any of its Affiliates following the Closing other than under an Employee Plan), change of control, transaction or similar bonuses, incentive and/or severance payments incurred or payable by the Company or any of its Subsidiaries in connection with the transactions contemplated hereby, but excluding any severance amounts that are payable upon a termination of employment at the direction of Parent or any of its Affiliates following the Closing, plus the employer portion of any payroll, employment or similar Taxes related to the payments described in this clause (a)(ii) and Section 2.6, (b) all costs, fees and expenses incurred as a result (or that would be incurred as a result of) the termination of any Affiliate Contract as contemplated hereby, (c) any assignment, change in control or similar fees expressly payable as a result of the execution of this Agreement or any Ancillary Agreements, (d) fifty percent (50%) of the fees and out-of-pocket costs payable to the Escrow Agent, (e) fifty percent (50%) of the fees and out-of-pocket costs payable to the Paying Agent, (f) fifty percent (50%) of the premium, applicable taxes, underwriting fee, any broker fee and out-of-pocket costs associated with obtaining any "tail" directors' and officers' or cyber "tail" policy required by this Agreement, (g) fifty percent (50%) of the fees, premiums and out-of-pocket costs associated with obtaining the R&W Policy, (h) fifty percent (50%) of the cost of obtaining any consents of third parties or any assignment or similar fees, other than any filing fees under the HSR Act, (i) costs, fees and expenses related to the procurement of only the statutory audit of the Company and its Subsidiaries for the year ended December 31, 2021, (j) any amounts owed pursuant to the Warrant Repurchase Agreement and (k) all other obligations which are specifically denoted herein as Company Transaction Expenses. For the avoidance of doubt, Company Transaction Expenses shall include any Company Transaction Expenses that arise as a result of the payment of any amounts following the Closing (including pursuant to Article III and Article IX), and any such post-Closing payments shall be payable net of any such Company Transaction Expenses.

"***Confidential Information***" has the meaning set forth in Section 11.11(b).

"***Contested Claim***" has the meaning set forth in Section 9.7(b) hereof.

"***Continuing Claim***" has the meaning set forth in Section 9.8(a).

"***Continuing General Claim***" has the meaning set forth in Section 9.8(a) hereof.

"***Continuing Special Claim***" has the meaning set forth in Section 9.8(b) hereof.

"***Contract***" means any written or oral contract, note, bond, mortgage, indenture, agreement, lease, license, commitment or other arrangement, understanding or undertaking, or other instrument or obligation (including master service agreements, task orders, work orders, or delivery orders or any such similar document and work orders entered into pursuant to or under such master service agreements), including any exhibits, annexes, appendices, or attachments thereto, and any amendments, modifications, supplements, extension or renewals thereto.

"***Contribution Amount***" means (i) the Purchase Price Escrow Amount plus (ii) the Indemnification Escrow Amount, plus (iii) the Special Indemnification Escrow Amount, plus (iv) the Expense Fund.

"***Contribution Percentage***" means a percentage obtained by dividing (i) the Contribution Amount by (ii) the Closing Date Purchase Price.

"***COVID-19***" means SARS-CoV-2 or COVID-19, and all evolutions thereof or related or associated epidemics, pandemics or disease outbreaks.

"***COVID-19 Tax Acts***" means the Families First Coronavirus Response Act (Pub. L. 116-127), The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) (including by the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116-142)), the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), any similar provision of applicable Law, and any executive order relating to the deferral of any payroll or similar Taxes, and includes any Treasury Regulations or other official guidance promulgated under any of the foregoing.

"***Customs and International Trade Laws***" means any law, statute, order of a Governmental Entity, regulation, rule, permit, license, directive, decree, ordinance or other written decision or requirement having the force or effect of law of any arbitrator, court, government or government agency or instrumentality or other Governmental Entity, concerning the importation, exportation, re-exportation, or deemed exportation of products, technical data, technology or services, and the terms and conduct of transactions and making or receiving of payment related to such importation, exportation, re-exportation or deemed exportation, including, as applicable, the Tariff Act of 1930, and other laws, regulations, and programs administered or enforced by the U.S. Department of Commerce ("***Commerce***"), U.S. International Trade Commission, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and their predecessor agencies; the U.S. Department of State ("***State***"); restrictions administered by the United States Office of Foreign Assets Control ("***OFAC***"), including the sanctioned entity list; orders of the President regarding embargoes and restrictions on transactions with designated countries and entities, including persons and entities designated on OFAC's list of Specially Designated Nationals and Blocked Persons; the anti-boycott regulations administered by Commerce; and the anti-boycott regulations administered by the U.S. Department of the Treasury; and restrictions or sanctions administered by the United Nations Security Council, the European Union ("***EU***") or any of the EU member states, Her Majesty's Treasury of the United Kingdom or other applicable jurisdiction.

"***Czech Contractor***" means any individual engaged by the Czech Subsidiary who has signed an independent contractor agreement with the Company and any Czech Subsidiary.

"***Czech Subsidiary***" means Pond5 s.r.o., a limited liability company incorporated and existing under Czech law, identification number 29144698, as a Subsidiary of the Company.

"***Damages***" has the meaning set forth in Section 9.1 hereof.

"***Deductible***" has the meaning set forth in Section 9.5(b) hereof.

"***Determination Date***" has the meaning set forth in Section 3.3(c).

"***DGCL***" has the meaning set forth in Section 2.1(a).

"***Dispute Notice***" has the meaning set forth in Section 3.3(c).

"***Dissenting Shareholder***" has the meaning set forth in Section 2.16(a).

"***Dissenting Shares***" has the meaning set forth in Section 2.16(a).

"***Dissenting Shares Amount***" means the product of (a) the Closing Date Purchase Price and (b) a fraction, the numerator of which is the number of Dissenting Shares and the denominator of which is the number of shares of Capital Stock outstanding immediately prior to the Effective Time (other than any shares of Capital Stock which are held in the treasury of the Company or by Parent, Merger Sub or any other Affiliate of Parent, all of which shall cease to be outstanding and be canceled and none of which shall receive any payment with respect thereto).

"***Effect***" has the meaning set forth in the definition of "Material Adverse Effect" hereof.

"***Effective Time***" has the meaning set forth in Section 2.1(a).

"***Employee Confidentiality Agreements***" has the meaning set forth in Section 4.8(g) hereof.

"***Employee Plans***" has the meaning set forth in Section 4.9(a).

"***Encumbrance***" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"***Environment***" means ambient air, indoor air, surface water, groundwater, drinking water, land surface, sediments, and subsurface strata & natural resources such as wetlands, flora and fauna.

"***Environmental Laws***" means all applicable federal, state, local and foreign laws, statutes and regulations (including common law) concerning (a) the pollution, protection or cleanup of the Environment or natural resources, including those relating to the treatment, storage, disposal, handling, transportation, discharge, emission, Release or threat of Release of, or exposure to, Hazardous Substances in effect as of the Closing Date, or (b) human health or safety.

"***Environmental Liability***" means any liability, claim, action, suit, agreement, judgment or order arising under or relating in any way to any Environmental Law for any damages (including natural resource damages), injunctive relief, losses, fines, penalties, fees, expenses (including reasonable fees and expenses of attorneys and consultants) or costs, whether contingent or otherwise, including those arising from or relating to: (a) compliance or non-compliance with any Environmental Law or any Environmental Permit, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Substances, (c) exposure to any Hazardous Substances, (d) the Release or threat of Release of any Hazardous Substances or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Environmental Permits***" means any and all permits, consents, certifications, licenses, approvals, registrations, filings, notifications, exemptions and other authorizations required under any applicable Environmental Law.

"***ERISA***" has the meaning set forth in Section 4.9(a).

"***Escrow Agent***" has the meaning set forth in Section 2.8.

"***Escrow Agreement***" has the meaning set forth in Section 2.8.

"***Escrow Amount***" means the sum of the Indemnification Escrow Amount, the Special Indemnification Escrow Amount and the Purchase Price Escrow Amount.

"***Escrow Fund***" means collectively or individually, as context requires, the Indemnification Escrow Fund, the Special Indemnification Escrow Fund and the Purchase Price Escrow Fund.

"***Escrow Release Date***" has the meaning set forth in Section 9.8(a).

"***Estimated Closing Cash***" means the estimated amount of Closing Cash as determined in accordance with Section 2.7(a).

"***Estimated Closing Indebtedness***" means the estimated amount of Closing Indebtedness as determined in accordance with Section 2.7(a).

"***Estimated Company Transaction Expenses***" means the estimated amount of Company Transaction Expenses as determined in accordance with Section 2.7(a).

"***Estimated Net Working Capital***" means the estimated amount of Closing Working Capital as determined in accordance with Section 2.7(a).

"***EU***" has the meaning set forth in the definition of "Customs and International Trade Laws" hereof.

"***Expense Fund***" means $100,000 which amount shall be held by the Shareholders' Representative and available for use in accordance with including Section 11.17 and the other terms of this Agreement.

"***Federal Acquisition Regulation***" means Title 48 Code of Federal Regulations.

"***Financial Statements***" has the meaning set forth in Section 4.4(a).

"***Forgiven***" means that amount of the PPP Indebtedness that the Small Business Administration determine need not be repaid by the Company, its Subsidiaries or the Surviving Corporation in accordance with the CARES Act and implementing guidance and regulations.

"***Fraud***" means, with respect to any Person, an actual and intentional common law fraud under Delaware law (including the element of scienter) with respect to representations and warranties in Article IV or Article V, the certificate required to be delivered pursuant to Section 7.2(d) or Section 7.3(c) or a representations or warranty set forth in any other Ancillary Agreement.

"***Fully Diluted Shares***" the sum (without duplication) of (i) the aggregate number of shares of Common Stock held by all holders of Common Stock immediately prior to the Effective Time, plus (ii) the aggregate number of shares of Common Stock issuable upon conversion of all shares of Preferred Stock held by all holders of Preferred Stock immediately prior to the Effective Time, plus (iii) the aggregate number of shares of Common Stock issuable upon exercise of all Vested Company Stock Options held by all holders of Vested Company Stock Options immediately prior to the Effective Time (assuming payment in full of the exercise price).

"***Fundamental Representations and Warranties***" means the representations contained in Section 4.1 (Organization), Section 4.2 (Capitalization), Section 4.3 (Authority of the Company; No Conflict; Required Filings and Consents), Section 4.16 (No Brokers) and the Tax Representations.

"***GAAP***" means generally accepted accounting principles in effect in the United States, applied on a consistent basis.

"***GDPR***" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and any applicable national implementing legislation.

"***Goodwin***" has the meaning set forth in Section 11.19(a).

"***Government Approvals***" has the meaning set forth in Section 6.5(a).

"***Government Contracts***" means any Contract, including any prime contract, subcontract (at any tier), facility contract, teaming agreement or arrangement, joint venture agreement, basic ordering agreement, pricing agreement, letter contract, purchase order, delivery order, task order or other contractual arrangement of any kind, as modified by binding modification or change orders, between the Company or any Subsidiary and (i) any Governmental Entity (acting on its own behalf or on behalf of another country, European Union or international organization), (ii) any prime contractor of any Governmental Entity, or (iii) any subcontractor (at any tier) to the Company or any Subsidiary with respect to any Contract of a type described in clauses (i) or (ii) above. For purposes of clarity, a task order, purchase order or delivery order issued pursuant to a Government Contract shall be considered a part of the Government Contract to which it relates.

"***Government Official***" means any Person employed by or that is an agent of any Governmental Entity (or Person with authority to contractually bind a Governmental Entity) or any political party or that is a candidate for Governmental Entity office.

"***Governmental Entity***" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, county, provincial or otherwise, and any European Union body, and any agency, authority, instrumentality, regulatory body, court, central bank, works council, commission or other government or quasi-government authority or entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (or self-government), or any arbitrator, court or tribunal of competent jurisdiction.

"***Hazardous Substance***" means any waste, pollutant, contaminant, substance or material, including petroleum, petroleum-based or petroleum-derived substance or waste, asbestos or asbestos-containing material, radiological, biological or medical substances or wastes, the presence of which is regulated, or requires investigation or remediation, under any Environmental Laws.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"***Income Tax***" means any Tax based upon, measured by or calculated with respect to (a) net income, profits, gains, margin or overall gross income or gross receipts (for the avoidance of doubt, including any capital gains or alternative minimum Tax) or (b) multiple bases (including corporate franchise, doing business or occupation Tax) if one or more of the bases on which that Tax is measured or calculated is described in clause (a) of this definition.

"***Indebtedness***" means, with respect to the Company and its Subsidiaries, all obligations and other Liabilities (including all obligations in respect of principal, accrued interest, penalties, fees and premiums (including make-whole premiums) and all prepayment premiums, penalties, breakage costs and other amounts that may become due as a result of the transactions contemplated hereby) of any the Company or its Subsidiaries (i) for borrowed money (including overdraft facilities), (ii) evidenced by notes, bonds, debentures or similar Contracts or securities, (iii) created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (iv) secured by a purchase money mortgage or other Encumbrance to secure all or part of the purchase price of the property subject to such Encumbrance, (v) for the deferred purchase price of assets, property, goods or other services, including all seller notes and "earn-out" payments (in each case, assuming the maximum achievement of performance targets), and purchase price adjustment payments, (vi) for capitalized liabilities under GAAP of such Person as lessee under leases (other than real property leases) that have been or should be, in accordance with GAAP, recorded as capital leases, (vii) in respect of letters of credit, bankers' acceptances, surety bonds and similar instruments (to the extent drawn), (viii) for Contracts relating to interest rate, currency rate or commodity price protection, swap agreements, collar agreements and other hedging agreements, (ix) forty percent (40%) of all deferred revenue and prepaid income received on or prior to the Closing Date, (x) for the Tax Liability Amount, (xi) the Company Accrued Bonus Amount and (xii) any indebtedness or other obligations of any other Person of the type described in the preceding clauses (i) through (viii) guaranteed by, or secured by any of the assets of, the Company or any of its Subsidiaries.

"***Indemnification Claims Period***" has the meaning set forth in Section 9.4.

"***Indemnification Escrow Amount***" means $1,050,000.

"***Indemnification Escrow Fund***" means the Indemnification Escrow Amount, and the funds from time to time in such account established with the Escrow Agent pursuant to the Escrow Agreement.

"***Independent Auditor***" has the meaning set forth in Section 3.3(c).

"***Information Statement***" has the meaning set forth in Section 6.6.

"***Intellectual Property Rights***" means all intellectual property and/or proprietary rights in and to the following throughout the world (a) patents, designs, utility models and statutory invention registrations and all registrations and pending applications therefor, (b) trademarks, service marks, slogans, logos, designs, certification marks, trade dress, corporate names, trade names, domain names and other indicia of source, and all goodwill associated therewith, and related registrations and applications, (c) copyrights, including copyrights (and other intellectual property rights) in Software, Internet websites and the contents thereof, and related registrations and applications, and (d) technology, know-how, trade secrets, manufacturing and production procedures and techniques, inventions, designs, research and development information, methods, plans, formulae, descriptions, compositions, drawings, specifications, technical data, pricing and cost information, business and marketing plans and proposals and customer and supplier lists and information. For clarity, this definition includes rights in Technical Data and Computer Software as such terms are defined in the Federal Acquisition Regulation (48 C.F.R. Parts 27 and 227).

"***Interim Financials***" has the meaning set forth in Section 4.4(a).

"***Irish Disability Scheme***" means the disability benefits scheme to which Pond5 Media Ireland Ltd makes contributions.

"***Irish Pension Scheme***" means the Pond5 Media Ireland Ltd Retirement Benefits Plan.

"***IRS***" means the United States Internal Revenue Service.

"***Knowledge of the Company***" means the knowledge after reasonable inquiry and investigation of the individuals listed on Schedule 1.1(b) hereto.

"***Law***" means any United States federal, state, and local (including municipal), and any non-U.S., laws (statutory, common or otherwise), statutes, regulations, decrees, rules, constitution, administrative pronouncements, treaties, codes, Orders, ordinances, certifications, judgments or policies enacted, adopted, issued, or promulgated by any Governmental Entity (including those pertaining to electrical, building, zoning, environmental, and occupational safety and health requirements) that is binding or applicable to such Person.

"***Letter of Transmittal***" has the meaning set forth in Section 2.7(c)(i).

"***Liabilities***" means any debt, liability or obligation of any kind, whether due or to become due, absolute or contingent, inchoate or otherwise, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, secured or unsecured, determined or determinable, or otherwise, and includes all costs and expenses relating thereto.

"***Material Adverse Effect***" means any event, occurrence, state of facts, condition, effect, circumstance, development, action, omission or change (each, an "***Effect***") that is, or would reasonably be expected to (a) become, individually or in the aggregate with one or more Effects, materially adverse to the business, assets, liabilities, results of operations, condition (financial or otherwise), or assets of the Company and its Subsidiaries, taken as a whole, or (b) prevent, materially impair, materially impede or materially delay (x) the consummation of the transactions contemplated hereby on or before the Outside Date or (y) the ability of the Company or any Subsidiary of the Company to perform its obligations under this Agreement; provided, however, that, for the purposes of the foregoing clause (a), no Effect to the extent resulting or arising from any of the following shall be deemed to constitute, or be taken into account in determining the occurrence of, a Material Adverse Effect: (i) changes generally affecting the economy, financial or securities markets, or political conditions; (ii) the announcement, or pendency of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, of the Company and its Subsidiaries with employees, suppliers, customers, Governmental Entities, or other third Persons (it being understood and agreed that this clause shall not apply with respect to any representation or warranty that is intended to address the consequences of the announcement or the pendency of this Agreement); (iii) any changes in applicable Law or GAAP or other applicable accounting standards, including interpretations thereof, (iv) acts of war, sabotage, or terrorism, or military actions, or the escalation thereof; (v) natural disasters, weather conditions, epidemics, pandemics, or disease outbreaks (including COVID-19) or public health emergencies (as declared by the World Health Organization or the Health and Human Services Secretary of the United States); (vi) general conditions in the industry in which the Company and its Subsidiaries operate; (vii) any failure, in and of itself, by the Company to meet any internal or published projections, forecasts, estimates, or predictions in respect of revenues, earnings, or other financial or operating metrics for any period (it being understood that the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or would reasonably be expected to become, a Material Adverse Effect, to the extent permitted by this definition and not otherwise excepted by another clause of this proviso); (viii) actions taken at the written direction of Parent or (xiv) actions expressly required to be taken pursuant to the express terms of this Agreement; provided further, however, that any Effect resulting from any event, change, and effect referred to in clauses (i), (iii), (iv), (v), or (vi) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on the Company and its Subsidiaries, taken as a whole, compared to other participants in the industries in which the Company and its Subsidiaries conduct their businesses.

"***Material Contract***" has the meaning set forth in Section 4.10(a).

"***Measurement Time***" means 11:59 p.m. New York City time on the day immediately preceding the Closing Date.

"***Merger***" has the meaning set forth in the Recitals hereto.

"***Merger Consideration***" means the consideration payable to Shareholders in respect of Shares pursuant to Section 2.4, and Section 2.6.

"***Merger Sub***" has the meaning set forth in the Preamble.

"***Merger Sub Common Stock***" has the meaning set forth in Section 2.5(a).

"***Net Working Capital***" means the current assets of the Company minus the current liabilities of the Company, in each case determined in accordance with the Accounting Policies, but excluding (i) Cash and Cash Equivalents, (ii) Indebtedness, (iii) all Income Tax assets and liabilities (including deferred Tax assets and liabilities), (iv) outstanding Accounts Receivable older than one hundred eighty (180) days, (v) Company Transaction Expenses and (vi) refundable Tax credit receivables. For avoidance of doubt, cash overdrafts and outstanding or uncleared outbound checks, drafts or wire transfers shall be treated as current liabilities in determining Net Working Capital.

"***Non-Privileged Deal Communications***" has the meaning set forth in Section 11.19(f).

"***Objection Period***" has the meaning set forth in Section 9.7(a) hereof.

"***OFAC***" has the meaning set forth in the definition of "Customs and International Trade Laws" hereof.

"***Off-the-Shelf Software***" has the meaning set forth in Section 4.8(j) hereof.

"***Open Source Software***" means any Software that is subject to, distributed, transmitted, licensed or otherwise made available under any so-called "public license," "open source license," "free license," "industry standard license," "intellectual property pool license" or similar license that requires, as a condition of use, modification, conveyance, access and/or distribution of such Software that other Software incorporated into, derived from, called by, combined, used or distributed with such Software be (a) disclosed, distributed, made available, offered, licensed or delivered in source code form, (b) licensed for the purpose of making derivative works, (c) licensed under terms that allow reverse engineering, reverse assembly, or disassembly of any kind, or (d) redistributable at no charge, including any version of any of the following licenses: GNU General Public License, GNU Library or "Lesser" Public License, BSD License, Affero General Public License, Apache Software License, any license listed at www.opensource.org, or any substantially similar license.

"***Option Closing Payment***" means the aggregate amount due to the holders of Vested Company Stock Options at Closing pursuant to Section 2.6(a).

"***Option Payment Condition***" has the meaning set forth in Section 2.7(c)(ii) hereof.

"***Option Per Share Amount***" means, with respect to each share of Common Stock issuable upon exercise of a Vested Company Stock Option, an amount equal to (i) the Per Share Amount minus (ii) the per share exercise price of such Vested Company Stock Option.

"***Option Per Share Contribution Amount***" means, with respect to each Vested Company Stock Option, an amount equal to (i) the Option Per Share Amount multiplied by (ii) the Contribution Percentage.

"***Option Pro Rata Portion***" means, with respect to each Shareholder holding Vested Company Stock Options, the quotient obtained by dividing (i) the Merger Consideration payable at Closing with respect to such Shareholder's Vested Company Stock Options by (ii) the aggregate Merger Consideration payable at Closing with respect to all Shareholders.

"***Option Surrender Agreement***" has the meaning set forth in Section 2.7(c)(ii).

"***Order***" means any decree, judgment, injunction, or other order, whether temporary, preliminary, or permanent.

"***Outside Date***" has the meaning set forth in Section 8.1(b)(ii).

"***Owed Amount***" has the meaning set forth in Section 9.7(d) hereof.

"***Owned Intellectual Property Rights***" has the meaning set forth in Section 4.8(a).

"***Parent***" has the meaning set forth in the Preamble.

"***Parent Benefit Plan***" has the meaning set forth in Section 6.10.

"***Parent Closing Date Taxes***" means any Taxes resulting from an action (other than the Transaction or any action required to be taken on the Closing Date by any Law or as a result of any Contract entered into prior to the Closing by the Company or any of their respective Affiliates) that is taken by the Buyer or any of its Affiliates after the Closing on the Closing Date (or as of the Closing Date) and is outside the ordinary course of business, including an election pursuant to Section 338 or 336 of the Code.

"***Parent Indemnified Parties***" has the meaning set forth in Section 9.1.

"***Parent Material Adverse Effect***" has the meaning set forth in Section 5.2(b) hereof.

"***Party***" has the meaning set forth in the Preamble.

"***Paycheck Protection Program***" means the U.S. Small Business Administration Paycheck Protection Program under Division A, Title I of the CARES Act.

"***Paying Agent***" means PNC Bank, National Association.

"***Paying Agent Agreement***" means a paying agent agreement to be entered into by the Paying Agent, the Shareholders' Representative and Parent on or prior to Closing, in substantially the form attached hereto as Exhibit A.

"***Per Share Amount***" means an amount equal to the quotient of (i)(a) the Closing Date Purchase Price minus (b) the Aggregate Series A Liquidation Preference minus (c) the Aggregate Series A-1 Liquidation Preference plus (d) the Aggregate Option Exercise Price divided by (ii) the Fully Diluted Shares.

"***Permits***" means all licenses, permits, consents, authorizations, registrations, approvals, qualifications and filings under any applicable Law or with any Governmental Entities, including, without limitation, any laboratory permits.

"***Permitted Encumbrances***" has the meaning set forth in Section 4.7(a).

"***Person***" means an individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization or other entity, or any Governmental Entity or quasi-governmental body or regulatory authority.

"***Personal Information***" means any information that constitutes "personal information," "personal data," or "personally identifiable information," as defined in and regulated by applicable Privacy Laws to which the Company and/or any of its Subsidiaries are subject.

"***Post-Closing Tax Period***" means any Tax period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"***PPP Indebtedness***" means any Indebtedness of the Company or any of its Subsidiaries, whether outstanding, repaid or Forgiven, obtained by the Company or its Subsidiaries pursuant to the Paycheck Protection Program.

"***Pre-Closing Tax Contest***" has the meaning set forth in Section 10.1.

"***Pre-Closing Tax Period***" means any Tax period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"***Pre-Closing Taxes***" means (i) any Taxes of the Company or any of its Subsidiaries for, or with respect to, any Pre-Closing Tax Period, (ii) any Taxes of any other Person imposed on the Company or any of its Subsidiaries, or for which the Company or any of its Subsidiaries is liable, under Treasury Regulation Section 1.1502-6 or 1.1502-78 or any similar provision of state, local or non-U.S. law, or as a transferee or successor, by Contract, operation of Law or otherwise, which Taxes relate to an affiliation, connection, event or transaction occurring, or a Contract entered into, before the Closing, except in each case, to the extent such Taxes are accrued as a liability in the calculation of the final Net Working Capital or Indebtedness, each as finally determined pursuant to Section 3.3 and (iii) any Transfer Taxes allocable to the Shareholders pursuant to Section 10.2 to the extent not included as a Company Transaction Expense as finally determined pursuant to Section 3.3; provided that, notwithstanding the foregoing, with respect to any originally filed Tax Return in respect of a Pre-Closing Tax Period that is filed by Parent or any of its Affiliates after Closing (or any subsequent amendment of any such Tax Return voluntarily filed by Parent or any of Affiliates (i.e., not filed as the result of any Tax audit or other Tax controversy for which the Shareholders are otherwise liable under this Agreement)), "Pre-Closing Taxes" shall not include the excess, if any, of the amount of Taxes shown as due and payable on such Tax Return over the amount of such Taxes accrued as a liability in the calculation of the final Net Working Capital or Indebtedness, each as finally determined pursuant to Section 3.3.

"***Preferred Stock***" means, collectively, the Series A Preferred Stock and the Series A-1 Preferred Stock.

"***Privacy Contracts***" has the meaning set forth in Section 4.29(a) hereof.

"***Privacy Laws***" means all Laws (including GDPR) applicable to the Company and/or its Subsidiaries concerning the use, collection, storage, administration, processing or disclosure of, Personal Information, data privacy, data security, data transfer (including cross-border transfer), data breach notification, or unsolicited email, telephone, or text message communications.

"***Privacy Policies***" has the meaning set forth in Section 4.29(a) hereof.

"***Privileged Deal Communications***" has the meaning set forth in Section 11.19(c).

"***Pro Rata Portion***" means, with respect to any Shareholder, the sum of such Shareholder's (i) Capital Stock Pro Rata Portion plus (ii) Option Pro Rata Portion. The aggregate Pro Rata Portion of all Shareholders shall equal 100%.

"***Proceedings***" has the meaning set forth in Section 4.14(a).

"***Process,***" "***Processed***" or "***Processing***" means, with respect to Personal Information, the use, collection, processing, storage, protection of, recording, organization, adaptation, alteration, transfer, retrieval, consultation, disclosure, dissemination or combination of such Personal Information, and including processing as defined under applicable Privacy Laws.

"***Property***" (or "***Properties***" when the context requires) means any Real Property and any personal or mixed property, whether tangible or intangible, owned or leased by the Company or any of its Subsidiaries.

"***Purchase Price***" means the Closing Date Purchase Price, plus or minus, as applicable, any adjustments to the Purchase Price pursuant to this Agreement.

"***Purchase Price Escrow Amount***" means $750,000.

"***Purchase Price Escrow Fund***" means the Purchase Price Escrow Amount, and the funds from time to time in such account established with the Escrow Agent pursuant to the Escrow Agreement.

"***R&W Policy***" means the representations and warranties insurance policy being obtained by Parent in connection with the transactions contemplated by this Agreement, a substantially final draft of which has been provided to the Company prior to the date hereof.

"***Real Property***" means any real property owned, leased or subleased by the Company or any of its Subsidiaries, together with all buildings, structures and facilities located thereon.

"***Related Party***" means, with respect to the Company or any of its Subsidiaries, (a) any Affiliate of thereof, (b) any Person who serves as a director, officer, general partner, managing member or in a similar capacity thereof or any of such entities Affiliates, (c) any immediate family member of any Person described in clause (a) or (b), and (d) any other Person who holds, individually or together with such other Person's Affiliates and any members of such other Person's immediate family, directly or indirectly, more than five percent (5%) of the outstanding equity or ownership interests of the Company.

"***Release***" means any spilling, leaking, pumping, pouring, emitting, emptying, discharge, injecting, escaping, leaching, dumping, disposing, depositing or migration into or through the Environment.

"***Representative***" means with respect to a particular Person, any director, officer, member, manager, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"***Requisite Shareholder Approval***" means the holders of not less than 93% in voting power of the issued and outstanding shares of Capital Stock, on a fully-diluted basis, entitled to vote thereon.

"***Retained General Indemnity Amount***" has the meaning set forth in Section 9.8(a) hereof.

"***Retained Indemnity Amount***" has the meaning set forth in Section 9.8(a).

"***Retained Special Indemnity Amount***" has the meaning set forth in Section 9.8(b) hereof.

"***Schedule of Adjustments***" has the meaning set forth in Section 3.3(b).

"***Series A Per Share Amount***" means, with respect to each share of Series A Preferred Stock, an amount equal to: (i) the Series A Per Share Liquidation Preference *plus* (ii) the Per Share Amount.

"***Series A Per Share Contribution Amount***" means, with respect to each share of Series A Preferred Stock, an amount equal to: (i) the Series A Per Share Amount *multiplied* by (ii) the Contribution Percentage.

"***Series A Per Share Liquidation Preference***" means, with respect to each share of Series A Preferred Stock, an amount equal: (i) $81.00 *plus* (ii) the aggregate amount of dividends declared but unpaid with respect to such share immediately prior to the Effective Time.

"***Series A-1 Per Share Amount***" means, with respect to each share of Series A-1 Preferred Stock, an amount equal to: (i) the Series A-1 Per Share Liquidation Preference *plus* (ii) the Per Share Amount.

"Series A-1 Per Share Contribution Amount" means, with respect to each share of Series A-1 Preferred Stock, an amount equal to: (i) the Series A-1 Per Share Amount *multiplied* by (ii) the Contribution Percentage.

"***Series A-1 Per Share Liquidation Preference***" means, with respect to each share of Series A-1 Preferred Stock, an amount: (i) $72.90 *plus* (ii) the aggregate amount of dividends declared but unpaid with respect to such share immediately prior to the Effective Time.

"***Series A Preferred Stock***" has the meaning given to such term in the Company Charter.

"***Series A-1 Preferred Stock***" has the meaning given to such term in the Company Charter.

"***Services***" has the meaning set forth in Section 4.17(c).

"***Shareholder Consent***" has the meaning set forth in Section 7.2(f).

"***Shareholder Indemnified Parties***" has the meaning set forth in Section 9.2 hereof.

"***Shareholders***" means any Person who holds shares of Common Stock, shares of Preferred Stock or Vested Company Stock Options (in each case, other than Specified Affiliate-Held Shares) as of immediately prior to the Closing.

"***Shares***" has the meaning set forth in the Recitals.

"***Shareholders Representative***" has the meaning set forth in the preamble hereof.

"***Shareholders' Representative Engagement Agreement***" has the meaning set forth in Section 11.17(c) hereof.

"***Shareholders' Representative Expense***" has the meaning set forth in Section 11.17(c) hereof.

"***Shareholders' Representative Group***" has the meaning set forth in Section 11.17(c) hereof.

"***Software***" means any and all (i) computer programs, systems, applications and code, including any and all software implementations of algorithms, models and methodologies and any source code, object code, development and design tools, applets, compilers and assemblers, (ii) databases and compilations, including any and all libraries, data and collections of data whether machine readable, on paper or otherwise, (iii) descriptions, flowcharts and other work product used to design, plan, organize and develop any of the foregoing, (iv) technology supporting, and the contents and audiovisual displays of, any internet site(s) and (v) documentation, other works of authorship and media, including user manuals and training materials, relating to or embodying any of the foregoing or on which any of the foregoing is recorded.

"***Special Indemnification Escrow Amount***" means $3,000,000.

"***Special Indemnification Escrow Fund***" means the Special Indemnification Escrow Amount, and the funds from time to time in such account established with the Escrow Agent pursuant to the Escrow Agreement.

"***Special Indemnification Items***" means those items set forth or described on Schedule 1.1(c).

"***Specified Affiliate-Held Shares***" has the meaning set forth in Section 2.4(a) hereof.

"***Specified Employment Letters***" means the employment letter agreements dated on or prior to the date hereof entered into between Parent and each Specified Individual in the form(s) attached hereto as Exhibit B.

"***Specified Individual***" means the individuals set forth on Schedule 1.1(d).

"***Standard Contracts***" means (i) licenses for Open Source Software, (ii) licenses for Off-the-Shelf Software, (iii) API and non-API seller and partnership agreements entered into in the ordinary course of business consistent with past practice, (iv) nondisclosure agreements entered into in the ordinary course of business consistent with past practice and (v) customer agreements and license agreements (including, but not limited to, those license agreements entered into pursuant to Content License Agreements, Contributor Agreements, Referral Program Terms, and Terms of Use) entered into in the ordinary course of business consistent with past practice and substantially on the same terms set forth on the templates attached to Schedule 1 of the Company Disclosure Schedules; *provided* that any Contract with a Top Customer, Top Supplier or Top Contributor shall not be considered a Standard Contract.

"***State***" has the meaning set forth in the definition of "Customs and International Trade Laws" hereof.

"***Stock Closing Payment***" means an amount equal to the Closing Date Purchase Price, minus the Dissenting Shares Amount and the Option Closing Payment.

"***Straddle Period***" means any Tax period that begins on or prior to, and ends after, the Closing Date.

"***Subsidiary***" or "***Subsidiaries***" means, with respect to any Person, any corporation, partnership, limited liability company or other entity in which such Person, directly or indirectly, owns or controls fifty percent (50%) or more of the voting stock or other ownership interests.

"***Surviving Corporation***" has the meaning set forth in Section 2.1(b).

"***Target Net Working Capital***" means negative $2,535,155.

"***Tax***" or "***Taxes***" means (i) all federal, state, local or non-U.S. taxes, duties, imposts, levies, assessments, withholdings or similar charges imposed by any Governmental Entity, including all income, corporation, alternative minimum, gross receipts, gross margin, capital, sales, use, ad valorem, value added, transfer, stamp duty, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, public health insurance, national insurance, customs, unemployment, excise, severance, stamp, occupation, property, escheat, unclaimed property and estimated taxes and payments, (ii) all interest, penalties, additions to tax or other additional amounts imposed by any Governmental Entity in connection with any item described in clause (i), in each case described in clauses (i) or (ii), whether disputed or not.

"***Tax Liability Amount***" means the sum of (A) all accrued but unpaid Income Taxes of the Company and/or any of its Subsidiaries for any Pre-Closing Tax Period (1) with respect to which the relevant Income Tax Return reporting such Income Taxes has not been filed as of the Closing Date or (2) that is attributable to any Income Tax audit adjustment that was agreed prior to Closing and (B) any Income Taxes payable in any Post-Closing Tax Period in respect of any item of income or gain attributable to (1) Section 965 of the Code, including by reason of any election under Section 965(h) of the Code, (2) any deferral pursuant to any COVID-19 Tax Act or any similar provision of state, local or non-U.S. Tax Law, (3) any change in any method of accounting with respect to any Pre-Closing Tax Period under Section 481 of the Code (or any similar provision of state, local or non-U.S. Law) and (4) any open transaction for U.S. federal Income Tax purposes or installment sale within the meaning of Section 453 of the Code (or, in each case, any similar non-U.S. transaction), in each case occurring on or prior to the Closing Date. The amount of any accrued but unpaid Income Tax described in clause (A) of the preceding sentence shall be calculated (I) taking into account any estimated payments of such Income Tax, (II) treating any overpayment of such Income Tax as a negative amount that offsets any other accrued but unpaid Income Taxes described in clause (A) of the preceding sentence, (III) treating all applicable Transaction Tax Deductions as deductible in a Pre-Closing Tax Period to the extent it is "more likely than not" that such treatment as a pre-Closing expense would be sustained and (IV) excluding any Parent Closing Date Taxes. The amount of any items of income or gain described in clauses (B)(3) or (B)(4) of the second preceding sentence shall be reduced (but not below zero) by any "2022 Pre-Closing Loss Carryover" (as defined below), to the extent the deductions comprising such 2022 Pre-Closing Loss Carryover would be deductible against such items of income or gain if such items of income or gain were recognized in the taxable period (or portion thereof) ending on the Closing Date. A "2022 Pre-Closing Loss Carryover" shall mean the excess, if any, of (i) all Transaction Tax Deductions deductible in the taxable period (or portion thereof) ending on the Closing Date (determined in a manner consistent with clause (III) of the preceding sentence) over (ii) the taxable income for Income Tax purposes, if any, for such taxable period (or portion thereof), determined without regard to (x) any Transaction Tax Deductions and (y) any carryovers of net operating losses or other Tax attributes from any prior taxable period(s). In determining the Tax Liability Amount, any Income Tax computations shall be made in a manner consistent with the Company's past practices except as otherwise specified in this definition or as otherwise required by applicable Law.

"***Tax Representations***" means the representations and warranties set forth in Section 4.5 and Section 4.6(g).

"***Tax Return***" means any original or amended return, statement, report, election, declaration, disclosure, schedule, claim for refund, form or other document or statement (including any estimated tax or information return or report) filed or required to be filed with any Taxing Authority.

"***Tax Sharing Agreement***" means any obligation with respect to the sharing, allocation, indemnification, reimbursement, responsibility for or payment of any Taxes or any Tax benefits between the Company and/or any of its Subsidiaries, on one hand, and any other Person(s) on the other hand (whether contained in an agreement primarily related to Taxes or as part of a larger commercial agreement not primarily related to Taxes), excluding any Commercial Tax Obligation.

"***Taxing Authority***" means any Governmental Entity having jurisdiction with respect to any Tax matter.

"***Third-Party Claim***" has the meaning set forth in Section 9.6(b).

"***Top Contributors***" has the meaning set forth in Section 4.18(c) hereof.

"***Top Customs***" has the meaning set forth in Section 4.18(a) hereof.

"***Top Suppliers***" has the meaning set forth in Section 4.18(b) hereof.

"***Transaction Tax Deductions***" means, without duplication and regardless of when or by whom paid, the applicable tax deductions of the Company and its Subsidiaries resulting from: (i) Company Transaction Expenses, (ii) payments in respect of Vested Company Stock Options pursuant to Section 2.6, (iii) all fees and expenses (including amounts treated as interest for Income Tax purposes), original issue discount, unamortized debt financing costs, breakage fees, consent fees, redemption, retirement or make-whole payments, premiums, and penalties, in each case, paid in connection with the repayment of the liabilities described in clauses (i), (ii) and (vii) of the definition of Indebtedness in connection with the Closing, and (iv) the Company's legal, accounting, financial advisory, and other advisory, transaction or consulting fees and expenses related to the transactions contemplated by this Agreement. The amount of the Transaction Tax Deductions shall be computed assuming that an election was made under Revenue Procedure 2011-29 to deduct seventy percent (70%) of any Transaction Tax Deductions that are success-based fees (as described in Revenue Procedure 2011-29).

"***Transfer Taxes***" has the meaning set forth in Section 10.2.

"***Unaudited 2021 Financial Statements***" has the meaning set forth in Section 4.4(a) hereof.

"***Unvested Company Stock Option***" means, as of immediately prior to the Effective Time, all Company Stock Options that are not Vested Company Stock Options.

"***U.S. Person***" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"***Vested Company Stock Option***" means, as of immediately prior to the Effective Time, all Company Stock Options to the extent they are vested and outstanding or that will vest at the Effective Time as a result of the consummation of the transactions contemplated by this Agreement.

"***Virtual Data Room***" means the electronic data room maintained on DFS Venue as "Project Piranha" by or on behalf of the Company in connection with the Merger.

"***Warrant Repurchase Agreement***" means the agreement, dated on or before the date hereof, by and between the Company and PacWest Bancorp (as successor in interest to Pacific Western Bank).

ARTICLE II. THE MERGER; CLOSING

Section 2.1. The Merger.

(a) Upon the terms and subject to the conditions of this Agreement, at the Closing, Merger Sub and the Company shall duly prepare, execute and acknowledge a certificate of merger (the "***Certificate of Merger***") in accordance with Section 251 of the Delaware General Corporation Law (the "***DGCL***") and they shall file the Certificate of Merger with the Secretary of State of the State of Delaware at such time and in accordance with the provisions of the DGCL. The Merger shall become effective upon the filing of the Certificate of Merger (or at such later time set forth in the Certificate of Merger as shall be agreed to by Merger Sub and the Company). The date and time when the Merger shall become effective is hereinafter referred to as the "***Effective Time***."

(b) On the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation under the Laws of the State of Delaware (the "***Surviving Corporation***"). The Surviving Corporation shall be a wholly owned subsidiary of Parent after the Effective Time.

(c) From and after the Effective Time, the Merger shall have the effects set forth in Section 259(a) of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, Liabilities, and duties of the Company and Merger Sub shall become debts, Liabilities, obligations and duties of the Surviving Corporation.

Section 2.2. Certificate of Incorporation and Bylaws of the Surviving Corporation.

(a) At the Effective Time and without any further action on the part of the Company or Merger Sub, the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to be in the form of the certificate of incorporation of Merger Sub immediately prior to the Effective Time, but reflecting any necessary amendments to reflect the name of the Surviving Corporation being "Pond5, Inc.", until duly amended in accordance with applicable Law.

(b) At the Effective Time and without any further action on the part of the Company or Merger Sub, the bylaws of the Surviving Corporation shall be amended and restated in their entirety to be in the form of the bylaws of Merger Sub immediately prior to the Effective Time, but reflecting any necessary amendments to reflect the name of the Surviving Corporation being "Pond5, Inc.", until duly amended in accordance with applicable Law.

Section 2.3. Directors and Officers of the Surviving Corporation.

(a) At the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each of such directors to hold office, subject to the applicable provisions of the DGCL, the certificate of incorporation and the bylaws of the Surviving Corporation.

(b) At the Effective Time, the officers of Merger Sub immediately prior to the Effective Time shall be officers of the Surviving Corporation, each of such officers to hold office, subject to the applicable provisions of the DGCL, the certificate of incorporation and the bylaws of the Surviving Corporation.

Section 2.4. Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any Party:

(a) Each Share that is owned by the Company (as treasury stock or otherwise) as of immediately prior to the Effective Time (collectively, the "***Cancelled Shares***") will be automatically cancelled and retired and will cease to exist, and no consideration will be delivered in exchange therefor. All Shares owned by Parent, any direct or indirect wholly owned Subsidiary of Parent or any direct or indirect wholly owned Subsidiary of the Company immediately prior to the Effective Time ("***Specified Affiliate-Held Shares***") shall be converted automatically into that number (which may be a fraction less than one) of newly issued, fully paid and nonassessable share(s) of common stock, par value $0.01 per share, of the Surviving Corporation that represents the same percentage interest in the Surviving Corporation common stock immediately after the Effective Time as such Specified Affiliate-Held Shares represented in the Company common stock immediately prior to the Effective Time.

(b) Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of any holder of shares of Capital Stock, each share of Capital Stock (other than any Dissenting Shares, Cancelled Shares and Specified Affiliate-Held Shares) issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished and automatically converted into the right to receive (following satisfaction of the Capital Stock Payment Condition):

(i) solely with respect to each share of Series A Preferred Stock, an amount of cash equal to (1) the Series A Per Share Amount *minus* (2) the Series A Per Share Contribution Amount;

(ii) solely with respect to each share of Series A-1 Preferred Stock, an amount of cash equal to (1) the Series A-1 Per Share Amount *minus* (2) the Series A-1 Per Share Contribution Amount;

(iii) solely with respect to each share of Company Common Stock, an amount of cash equal to (1) the Per Share Amount *minus* (2) the Company Common Stock Per Share Contribution Amount;

(iv) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Capital Stock Pro Rata Portion of the Purchase Price Escrow Fund, if any, required to be paid to the former holder of such share with respect thereto in accordance with Section 2.8;

(v) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Capital Stock Pro Rata Portion of the Indemnification Escrow Fund and the Special Indemnification Escrow Fund, if any, required to be delivered to the former holder of such share in accordance with Section 9.8, as and when such deliveries are required to be made; and

(vi) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Capital Stock Pro Rata Portion of the Expense Fund, if any, required to be delivered to the former holder of such share in accordance with Section 2.8, as and when such amounts are required to be delivered.

Section 2.5. Merger Sub Stock.

(a) Each share of common stock, par value $0.01 per share, of Merger Sub ("***Merger Sub Common Stock***"), issued and outstanding immediately prior to the Effective Time, shall be converted into one fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation. As of the Effective Time, the shares of Merger Sub Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and the holder or holders of such shares shall cease to have any rights with respect thereto, except the right to receive shares of common stock in the Surviving Corporation to be issued in consideration therefor as provided herein, without interest. After the Effective Time, Parent shall be the holder of all of the issued and outstanding shares of the Surviving Corporation's common stock.

Section 2.6. Company Stock Options.

(a) Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of any holder of a Vested Company Stock Option, each Vested Company Stock Option issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished and automatically converted into the right to receive, for each share of Common Stock for which such Vested Company Stock Option was exercisable:

(i) an amount of cash equal to (1) the Option Per Share Amount minus (2) Option Per Share Contribution Amount;

(ii) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Option Pro Rata Portion of the Purchase Price Escrow Fund, if any, required to be delivered to the former holder of such Vested Company Stock Option in accordance with Section 2.8, as and when such deliveries are required to be made;

(iii) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Option Pro Rata Portion of the Indemnification Escrow Fund and the Special Indemnification Escrow Fund, if any, required to be delivered to the former holder of such Vested Company Stock Option share in accordance with Section 9.8, as and when such deliveries are required to be made; and

(iv) a right to receive, at the times and subject to the contingencies set forth in this Agreement, the Option Pro Rata Portion of the Expense Fund, if any, required to be delivered to the former holder of such Vested Company Stock Option in accordance with Section 2.8, as and when such amounts are required to be delivered.

(b) At the Effective Time, each Unvested Company Stock Option outstanding immediately prior to the Effective Time shall be cancelled and terminated without consideration.

(c) The Company shall take all actions necessary to terminate the Company's 2007 Stock Option and Grant Plan and the Company's 2018 Stock Option and Grant Plan as of the Effective Time and to cancel and terminate each Vested Company Stock Option and Unvested Company Stock Option in accordance with Section 2.6(a) and (b).

(d) Notwithstanding anything to the contrary in this Agreement, to the extent that any Shareholder holding Vested Company Stock Options receives, after the date hereof, the aggregate Merger Consideration to which such Shareholder is entitled hereunder with respect to such Vested Company Stock Option (including any applicable (i) Option Pro Rata Portion of the Indemnification Escrow Fund and the Special Indemnification Escrow Fund and (ii) any portion of the Expense Fund to which such holder is entitled in connection with such Vested Company Stock Option), such holder shall have no further right to any consideration under this Agreement (including to any portion of the Escrow Amount or Expense Fund). For the avoidance of doubt, no Parent Indemnified Party shall have any recourse to the Merger Consideration received by a Shareholder holding Vested Company Stock Options pursuant to this Section 2.6(d) other than such Shareholder's liability under Section 9.1(b) through Section 9.1(g).

Section 2.7. Delivery of Funds; Payment of Indebtedness and Company Transaction Expenses.

(a) Not later than three (3) Business Days prior to the anticipated Closing Date, the Company shall deliver to Parent (i) a statement setting forth in reasonable detail the Company's good faith estimate of the amount of Closing Working Capital, Closing Indebtedness, Company Transaction Expenses and Closing Cash, each as determined in accordance with GAAP and, in the case of Closing Working Capital, in the form set forth on Schedule 2.7(a) hereto (the "***Closing Statement***") and (ii) a duly completed Allocation Schedule (using the same calculations and following the same methodologies set forth on Schedule 2.7(a) hereto). The Closing Statement shall further include a reasonably detailed calculation and description of how the estimated amount of Closing Working Capital was determined, the amount of such estimated Closing Working Capital and the amount of such Estimated Closing Cash, Estimated Company Transaction Expenses and Estimated Closing Indebtedness and shall be used in the determination of the Closing Date Purchase Price, together with reasonable supporting documentation therefor. Parent may, until one (1) Business Day prior to the anticipated Closing Date, provide the Company with reasonable comments to the Closing Statement and the Allocation Schedule, and the Company shall consider such comments in good faith. The Company shall provide all supporting documentation reasonably requested by Parent in connection with Parent's review of the preliminary and final Closing Statement and Allocation Schedule.

(b) Notwithstanding anything to the contrary in this Agreement or any investigation or examination conducted, or any knowledge possessed or acquired, by or on behalf of Parent, Merger Sub, the Surviving Corporation or any of their respective Affiliates, (i) the Parties acknowledge and agree that the preparation of the Allocation Schedule and the allocation set forth therein are the sole responsibility of the Company, and that Parent, Merger Sub and their respective Affiliates (including, following the Effective Time, the Surviving Corporation and its Subsidiaries) shall be entitled to rely on the Allocation Schedule, without any obligation to investigate or verify the accuracy or correctness thereof, and to make payments in accordance therewith and (ii) in no event shall Parent, Merger Sub, the Surviving Corporation or any of their respective Affiliates, have any Liability to any Person (including the Shareholders' Representative and each of the Shareholders) in connection with any claims relating to any alleged inaccuracy or miscalculations in, or otherwise relating to, the preparation of the Allocation Schedule and the allocation set forth therein or payments made by any Person (including Parent, Merger Sub, the Surviving Corporation and their respective Affiliates) in accordance therewith. On the Closing Date, immediately after the Effective Time, Parent shall pay, or shall cause to be paid, (i) to the Paying Agent the Stock Closing Payment (on behalf of the holders of Common Stock and Preferred Stock), less the Escrow Amount and the Expense Fund, as determined in accordance with Section 2.4(b), as applicable, by wire transfer of immediately available funds to the account(s) designated by the Paying Agent, such account(s) to be identified by the Paying Agent in writing to Parent at least two (2) Business Days prior to the Closing Date and (ii) to the Company the Option Closing Payment (on behalf of the holders of Vested Company Stock Options) by wire transfer of immediately available funds to the account(s) designated by the Company, such account(s) to be identified by the Company in writing to Parent at least two (2) Business Days prior to the Closing Date.

(c) (i) Upon the delivery by a Shareholder (other than a holder of Vested Company Stock Options) of a duly executed letter of transmittal in substantially the form of Exhibit C (the "***Letter of Transmittal***") (the "***Capital Stock Payment Condition***"), the Paying Agent shall pay, on or prior to the later of (A) the Closing Date or (B) one (1) Business Day following the date upon which the Capital Stock Payment Condition has been satisfied, to each such Shareholder by wire transfer of immediately available funds to the account of such Shareholder, such Shareholder's portion of the Stock Closing Payment, less the Escrow Amount and Expense Fund, as determined in accordance with Section 2.4(b), as applicable. Following the Effective Time, each share of Capital Stock shall be deemed, for all corporate purposes, to evidence only the right to receive upon such surrender, the Merger Consideration deliverable in respect thereof to which such Person is entitled pursuant to this Article II. No interest shall be paid or accrued in respect of such cash payments. The Paying Agent shall provide Parent a copy of each duly executed Letter of Transmittal within three (3) Business Days of receipt from such Shareholder.

(ii) Upon the delivery by a Shareholder holding Vested Company Stock Options of a duly executed option surrender agreement in substantially the form of Exhibit D (the "***Option Surrender Agreement***") (the "***Option Payment Condition***"), the Surviving Corporation shall pay, on or prior to the first or second regularly scheduled payroll date after the Closing that is five (5) Business Days following the satisfaction by such Shareholder of the Option Payment Condition, to each such Shareholder holding a Vested Company Stock Option, by wire transfer of immediately available funds to the account of such holder or otherwise in accordance with the Company's payroll practices, such holder's portion of the Option Closing Payment as determined in accordance with Section 2.6(a).

(d) At least three (3) Business Days prior to the Closing Date, the Company shall provide to Parent (i) a complete and correct list of the obligees of all the Estimated Closing Indebtedness of the Company and its Subsidiaries, (ii) the amount of the Estimated Closing Indebtedness owed to each such obligee as at the Closing Date immediately prior to the Closing and (iii) wire instructions for each such obligee. At the Closing, the Company shall provide Parent with executed customary payoff letters in form and substance reasonably satisfactory to Parent providing for the satisfaction and discharge of all obligations in respect of the Estimated Closing Indebtedness, including the termination of all related commitments, the release of all related guarantees and Encumbrances and filing of all documents necessary or desirable to effectuate, or reflect in public record, such satisfaction, release and discharge, effective upon the payment of such indebtedness. At the Closing, Parent, on behalf of the Company and its Subsidiaries, shall pay to the holders of the Estimated Closing Indebtedness an amount sufficient to repay all such Indebtedness, with the result that immediately following the Closing there will be no further monetary obligations of the Company and its Subsidiaries with respect to any such Indebtedness outstanding immediately prior to the Closing.

(e) At least three (3) Business Days prior to the Closing Date, the Company shall cause each payee of Estimated Company Transaction Expenses to submit a written invoice for the full amount of such payee's Estimated Company Transaction Expenses. At least two (2) Business Days prior to the Closing Date, the Company shall provide to Parent a complete and correct list of (i) the payees of Estimated Company Transaction Expenses, (ii) the amount of Estimated Company Transaction Expenses payable to each such payee and (iii) wire instructions for each such payee. At the Closing (or, in the case of a Change of Control, bonus, termination or other similar payment, at such times as may be required under the applicable employee benefit plan or employee benefit agreement providing for such payment), Parent, on behalf of the Company and its Subsidiaries, shall pay all Estimated Company Transaction Expenses, in each case by wire transfer of immediately available funds pursuant to such applicable written instructions provided to Parent by the Company.

Section 2.8. Escrow Amount and Expense Fund. At Closing, Parent shall cause the Escrow Amount to be delivered to PNC Bank, National Association, as escrow agent (the "***Escrow Agent***"), for deposit into an account pursuant to an escrow agreement by and among Parent, the Shareholders' Representative, and the Escrow Agent (the "***Escrow Agreement***") substantially in the form annexed hereto as Exhibit E. The Escrow Amount shall be paid by Parent to the Escrow Agent at Closing, by wire transfer of immediately available funds to the account designated in writing by the Escrow Agent. The Escrow Fund will be held by the Escrow Agent as security for the Shareholders' indemnification and other obligations under Article III and Article IX, as applicable. At Closing, Parent shall cause the Expense Fund to be delivered to the Shareholders' Representative by wire transfer of immediately available funds to the account(s) designated in writing by the Shareholders' Representative. The Expense Fund will be held by the Shareholders' Representative for its benefit as security for its obligations on behalf of the Shareholders under this Agreement, including under Article XI, and otherwise in accordance with this Agreement. Any portions of the Escrow Fund and Expense Fund that are released to the Paying Agent on behalf of the Shareholders (other than the holders of Vested Company Stock Options) or the Surviving Corporation (in the case of holders of Vested Company Stock Options) in accordance with the terms of this Agreement and the Ancillary Agreements shall constitute Merger Consideration for purposes of Section 2.4, and Section 2.6 will be paid to the Shareholders in accordance with each Shareholder's Capital Stock Pro Rata Portion and Option Pro Rata Portion, as applicable. For U.S. federal, and applicable state and local Income Tax purposes, the parties intend that the (i) Escrow Amount be treated as deferred contingent consideration eligible for installment sale treatment pursuant to Section 453 of Code and the Treasury Regulations thereunder, and (ii) Expense Fund be treated as having been received and voluntarily set aside by the Shareholders on the Closing Date. The parties shall report Escrow Amount and Expense Fund in a manner consistent with the preceding sentence and shall not take any Tax position (whether on a Tax Return or otherwise) inconsistent with such treatment unless required by Law or the good faith resolution of a Tax audit or other Tax proceeding.

Section 2.9. No Liability. None of Parent, Merger Sub, the Company and any of its Subsidiaries, the Surviving Corporation, the Paying Agent or the Shareholders' Representative shall be liable to any Person in respect of any Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Company Shareholder shall not have delivered a duly executed Letter of Transmittal, if applicable, prior to the date on which any Merger Consideration, respectively, would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration in respect thereof shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

Section 2.10. No Further Right of Transfers. At and after the Effective Time, each Shareholder shall cease to have any rights as an equity holder of the Company, except as otherwise required by applicable Law and except for the right of each Shareholder to deliver a duly executed Letter of Transmittal, if applicable, in exchange for payment of its Merger Consideration (or Dissenting Shares Amount, as applicable) pursuant to this Agreement, and no transfer of Shares shall be made on the stock transfer books of the Surviving Corporation. As of the Effective Time, the stock ledger of the Company with respect to the Shares shall be closed.

Section 2.11. The Closing. The Closing shall take place at the offices of Cahill Gordon & Reindel LLP, 32 Old Slip, New York, New York, or at such other place as the Parties may agree, at 10:00 A.M. local time on the first (1st) Business Day after the conditions set forth in Article VII have been satisfied or waived (other than conditions that by their terms are to be satisfied at the Closing but subject to the satisfaction of such conditions) or at such other place, time or date as may be mutually agreed upon by the Parties hereto (the day on which the Closing takes place being the "***Closing Date***").

Section 2.12. Deliveries by the Company. At the Closing, the Company shall deliver (in addition to any other documents required to be delivered pursuant to Article VII) or cause to be delivered to Parent and Merger Sub the following:

(a) a certificate of the Secretary of the Company certifying copies of the respective organizational documents of the Company and the resolutions of the governing body of the Company authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements to which the Company is a party and the transactions contemplated hereby and thereby, and certifying the signature and incumbency of the persons authorized to execute and deliver this Agreement, the Ancillary Agreements to which it is a party and any other agreements, instruments, or other documents or certificates that the Company is required to deliver pursuant to this Agreement;

(b) the certificate of incorporation or formation of the Company certified as of a recent date by the Secretary of State of the state of Delaware;

(c) a certificate of good standing as of a recent date with respect to the Company from the Secretary of State of the state of Delaware;

(d) the resignations of the officers and directors of the Company and each of its Subsidiaries pursuant to Section 6.12, effective as of the Closing Date, as requested by Parent prior to Closing;

(e) each Ancillary Agreement to which the Company or any Subsidiary of the Company is a party, duly executed by the Company or such Subsidiary of the Company, as applicable;

(f) the minute books, certificates of formation or incorporation, as applicable, and ledger and record books of the Company and each Subsidiary of the Company as they exist on the Closing Date, to the extent such documents are not located at the offices of the Company or a Subsidiary of the Company (with delivery via electronic mail to suffice);

(g) evidence satisfactory to Parent that, except for those transactions set forth on Schedule 2.12(g), all transactions between the Company or any Subsidiary of the Company, on the one hand, and any Shareholder or any Subsidiary or Affiliate of any Shareholder, on the other hand, have been terminated as of Closing;

(h) an affidavit signed by an authorized officer of the Company, under penalties of perjury, stating that the Company is not and, during the applicable period, has not been a United States real property holding corporation, dated as of the Closing Date and in form and substance required under Treasury Regulation Section 1.897-2(h) and 1.1445-2(c)(3), along with any supplemental statements required by Treasury Regulation Section 1.897-2(h)(5), if applicable, and an executed notice to the IRS conforming to the requirements of Treasury Regulation Section 1.897-2(h);

(i) copies of customary payoff letters in form and substance reasonably satisfactory to Parent providing for the satisfaction and discharge of all obligations in respect of Indebtedness of the Company and any of its Subsidiaries for borrowed money, including the termination of all related commitments, the release of all related guarantees and Encumbrances and filing of all documents necessary or desirable to effectuate, or reflect in public record, such satisfaction, release and discharge, effective upon the payment of such Indebtedness;

(j) each Specified Individual will have executed and delivered to Parent a Specified Employment Letter in the form for such Specified Individual attached hereto as part of Exhibit B;

(k) a release from Jefferies LLC with respect to the agreements in that certain Engagement Letter addressed to the Company, dated August 22, 2019, in a form reasonably satisfactory to Parent;

(l) the Warrant Repurchase Agreement, duly executed by the parties thereto, and

(m) each Shareholder listed on Schedule 2.12(j) will have executed and delivered to Parent a Restrictive Covenant Agreement in the form attached hereto as Exhibit F-1 or Exhibit F-2, as applicable.

Section 2.13. Deliveries by Parent. At or after the Closing, as applicable, Parent shall deliver (in addition to any other documents required to be delivered pursuant to Article VII) or cause to be delivered to the Company, the Shareholders' Representative, the Paying Agent or the Escrow Agent, as applicable, the following:

(a) (i) the Stock Closing Payment to the Paying Agent, less the Escrow Amount and the Expense Fund, (ii) the Escrow Amount to the Escrow Agent, (iii) the Expense Fund to the Shareholders' Representative and (iv) the Option Closing Payment to the Company;

(b) the Ancillary Agreements to which Parent is a party, duly executed by Parent; and

(c) a certificate of the Secretary of Parent and Merger Sub certifying (i) copies of the resolutions of the governing body of Parent and Merger Sub authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements to which Parent and Merger Sub are a party and the transactions contemplated hereby and thereby and (ii) the signature and incumbency of the persons authorized to execute and deliver this Agreement, the Ancillary Agreements to which Parent and Merger Sub are party to and any other agreements, instruments, or other documents or certificates that Parent and Merger Sub are required to deliver pursuant to this Agreement.

Section 2.14. Closing Agreements. At or after the Closing, as applicable, the Parties shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments or documents as may be reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

Section 2.15. Tax Withholding. Each of the Parent, the Company and the Paying Agent shall be entitled to deduct and withhold Taxes from the Closing Date Purchase Price or any other amounts payable hereunder to or for the account of any Shareholder, employee or director hereunder (including payment of such Shareholder's applicable portion of the any amounts payable hereunder that are deposited with the Shareholders' Representative), and any other compensatory payments made in connection with the Merger, to the extent such Taxes are required to be deducted and withheld under any applicable Tax Law; *provided*, *however*, that no deduction or withholding of U.S. federal Taxes shall be made with respect to payment of the Closing Date Purchase Price (other than with respect to amounts treated as compensation for U.S. federal Income Tax purposes and paid through the Company's or Surviving Corporation's payroll) to the extent that the Company delivers the documentation required pursuant to Section 2.12(h) and the Shareholders deliver either a duly executed IRS Form W-9 certifying that such Shareholder is a "United States person" as defined in Section 7701(a)(30) of the Code and is not subject to U.S. federal backup withholding or a duly executed applicable IRS Form W-8 certifying as to such Shareholder's non-United States person status, as applicable, unless there has been a change in applicable Tax Law that requires such U.S. federal Tax withholding to be made notwithstanding that the Company and the Shareholders have provided such documentation. In the event any Taxes are deducted and withheld in accordance with this Section 2.15 and paid to the applicable Taxing Authority, the amount of such Taxes shall be treated for all purposes of this Agreement as having been paid to or for the account of the applicable such Shareholder (including such Shareholder's applicable portion of the amounts payable hereunder that are deposited with the Shareholder's Representative) or recipient of a compensatory payment, as applicable.

Section 2.16. Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary and to the extent available under the DGCL, Shares of Capital Stock that are outstanding immediately prior to the Effective Time and that are held by any Shareholder who is entitled to demand and properly demands the appraisal for such shares of Capital Stock (such shares, the "***Dissenting Shares***," and such Shareholder, a "***Dissenting Shareholder***") pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL ("***Section 262***") shall not be converted into, or represent the right to receive, the Merger Consideration. Any such Shareholder shall instead be entitled to receive payment of the fair value of such Shareholder's Dissenting Shares in accordance with the provisions of Section 262; provided, however, that all Dissenting Shares held by any Shareholder who shall have failed to perfect or who otherwise shall have withdrawn or lost such Shareholder's rights to appraisal of such shares of Capital Stock under Section 262 shall thereupon be deemed to have been converted into, and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without any interest thereon, upon delivery of a duly executed Letter of Transmittal.

(b) The Company shall give Parent prompt notice, within three (3) Business Day, of any demands received by the Company for appraisal of any Shares, withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of Parent (which shall not be unreasonably withheld) make any payment with respect to any demands for appraisal or offer to settle or settle any such demands, or agree to commit to do any of the foregoing.

Section 2.17. Payments to Paying Agent and Escrow Agent. Notwithstanding any other provision in this Agreement, all payments by Parent, Merger Sub or the Surviving Corporation to the Paying Agent and the Escrow Agent in accordance with the terms of this Article II for the satisfaction of any obligation (including payment of the Merger Consideration), shall constitute full satisfaction to the applicable Shareholder or otherwise.

ARTICLE III. PURCHASE PRICE ADJUSTMENT

Section 3.1. Purchase Price Adjustment. The Purchase Price shall be subject to adjustment as set forth below and all references in this Agreement to the Purchase Price shall be deemed to be the Purchase Price as adjusted pursuant to this Article III.

Section 3.2. Certain Adjustments.

(a) (i) If Net Working Capital, as finally determined pursuant to Section 3.3, is less than the Estimated Net Working Capital, then the Purchase Price shall be reduced dollar-for-dollar by the amount of such shortfall or (ii) if Net Working Capital, as finally determined pursuant to Section 3.3, is greater than the Estimated Net Working Capital, then the Purchase Price shall be increased dollar-for-dollar by the amount of such increase.

(b) (i) If the Closing Cash, as finally determined pursuant to Section 3.3, is less than the Estimated Closing Cash, then the Purchase Price shall be reduced dollar-for-dollar by the amount of such shortfall or (ii) if Closing Cash, as finally determined pursuant to Section 3.3, is greater than the Estimated Closing Cash, then the Purchase Price shall be increased dollar-for-dollar by the amount of such increase.

(c) (i) If the Closing Indebtedness of the Company and its Subsidiaries, as finally determined pursuant to Section 3.3, is less than the Estimated Closing Indebtedness of the Company, then the Purchase Price shall be increased dollar-for-dollar by the amount of such shortfall or (ii) if the Closing Indebtedness of the Company and its Subsidiaries, as finally determined pursuant to Section 3.3, is greater than the Estimated Closing Indebtedness of the Company, then the Purchase Price shall be reduced dollar-for-dollar by the amount of such increase.

(d) (i) If the Company Transaction Expenses, as finally determined pursuant to Section 3.3, are less than the Estimated Company Transaction Expenses, then the Purchase Price shall be increased dollar-for-dollar by the amount of such shortfall or (ii) if the Company Transaction Expenses, as finally determined pursuant to Section 3.3, are greater than the Estimated Company Transaction Expenses, then the Purchase Price shall be reduced dollar-for-dollar by the amount of such increase.

Section 3.3. Closing Balance Sheet; Schedule of Adjustments.

(a) The determination of the adjustments, if any, required to be made to the Purchase Price pursuant to Section 3.2 shall be made pursuant to the following provisions:

(b) Within ninety (90) days after the Closing Date, Parent shall prepare and deliver, or cause to be prepared and delivered, to the Shareholders' Representative the following: (i) a balance sheet of the Company as of immediately prior to the Closing presented in substantially the format attached hereto as Schedule 3.3 (the "***Closing Balance Sheet***") and prepared in accordance with GAAP (ii) a calculation of Net Working Capital, Closing Cash, Company Transaction Expenses and Closing Indebtedness; and (iii) the adjustment, if any, required to be made to the Purchase Price pursuant to Section 3.2 (the "***Schedule of Adjustments***").

(c) The Shareholders' Representative will have a period of thirty (30) days following the delivery of the Closing Balance Sheet, the calculation of Net Working Capital, Closing Cash, Company Transaction Expenses and Closing Indebtedness and the Schedule of Adjustments to notify Parent in writing of any disagreements with any of the foregoing (such notice, a "***Dispute Notice***"), any such Dispute Notice shall specify those items or amounts as to which the Shareholders' Representative disagrees and its alternative calculations with respect to each item set forth in the Schedule of Adjustments (in each case including the reasons therefore and reasonable detail on such objections) and the Shareholders' Representative shall be deemed to have agreed with all other items and amounts contained in the Schedule of Adjustments, which shall be final, binding and conclusive for all purposes hereunder. The Shareholders' Representative will have reasonable access during normal business hours and upon reasonable notice to the books, records, work papers and other financial information of the Company related solely to the preparation of the Closing Balance Sheet, the calculation of Net Working Capital, Closing Cash, Company Transaction Expenses and Closing Indebtedness and the Schedule of Adjustments. The failure of the Shareholders' Representative to submit a Dispute Notice to Parent within such thirty (30) day period shall be deemed acceptance of the Closing Balance Sheet as well as the calculation of Net Working Capital, Closing Cash, Company Transaction Expenses and Closing Indebtedness and the Schedule of Adjustments. In the event that the Shareholders' Representative timely submits a Dispute Notice to Parent, the Parties will attempt in good faith to resolve such disagreement and, upon such resolution, if any, any adjustment to the Purchase Price shall be made in accordance with the agreement of the Parties. If within twenty (20) Business Days (or such longer period as Parent and the Shareholders' Representative shall mutually agree in writing) after delivery to Parent of the Dispute Notice, the Parties are unable to resolve such disagreement, then either the Shareholders' Representative, on the one hand, or Parent, on the other hand, shall have the right to submit the determination of such matters to an independent accountant of national standing reasonably acceptable to the Shareholders' Representative and Parent (the "***Independent Auditor***"). Each of the Shareholders' Representative and Parent shall comply, and shall instruct the Independent Auditor to comply, with the terms of reference and procedures set forth below:

(i) The Independent Auditor (i) shall consider only those items or amounts in the Schedule of Adjustments as to which the Shareholders' Representative has disagreed and which have not been resolved prior to submission to the Independent Auditor, (ii) with respect to each matter submitted to it, shall not resolve such matter in a manner that is more favorable to Parent than the Schedule of Adjustments or more favorable to the Shareholders' Representative than the Dispute Notice delivered pursuant to Section 3.3(c) and (iii) shall not consider any proposals related to settlement of any disputed items made by any of the parties. The Independent Auditor is not authorized to, and shall not, make any other determination including any determination with respect to any matter included in the Schedule of Adjustments or the Shareholders' Dispute Notice that was not submitted for resolution to the Independent Auditor.

(ii) The Shareholders' Representative and Parent shall each prepare a written submission within thirty (30) days of the formal appointment of the Independent Auditor on the matters in dispute which, together with the relevant supporting documents, shall be submitted to the Independent Auditor for determination, with copies of such submissions submitted at the same time to the other Party.

(iii) Following delivery of their respective submissions, each of the Shareholders' Representative and Parent shall have the opportunity to comment once only on the other's submissions by written comment delivered to the Independent Auditor not later than ten (10) Business Days after receipt of the other's submissions, with copies of such comments submitted at the same time to the other Party.

(iv) The Independent Auditor may request further information or clarification on any matter which it in its sole discretion decides is relevant from either of the Shareholders' Representative or Parent, with copies of such request submitted to at the same time to the other Party. Any response to such a request which the Shareholders' Representative or Parent (as the case may be) may wish to make shall be delivered by the Shareholders' Representative or Parent (as the case may be) to the Independent Auditor not later than fifteen (15) Business Days after receipt of such request from the Independent Auditor, with copies of such response submitted at the same time to the other Party. Notwithstanding the foregoing, the Independent Auditor shall not be entitled to hold any hearings or take or order the taking of depositions or other testimony.

(v) Unless otherwise directed by the Independent Auditor, following delivery of such a response, the non-responding Party (the Shareholders' Representative or Parent (as the case may be)) shall have the opportunity to comment once only on the response by written comment delivered to the Independent Auditor not later than ten (10) Business Days after receipt of the response by the non-responding Party (the Shareholders' Representative or Parent (as the case may be)), with copies of such comment submitted at the same time to the other Party.

(vi) Thereafter, neither the Shareholders' Representative nor Parent (nor any other person or persons acting on behalf of any of them) shall be entitled to make further submissions except insofar as the Independent Auditor so requests in accordance with Section 3.3(c)(iii) and (iv).

(vii) Each of the Shareholders' Representative and Parent shall instruct the Independent Auditor to give its determination as soon as possible but in any event, unless otherwise agreed between the Shareholders' Representative and Parent, within ten (10) Business Days of the receipt by the Independent Auditor of all requested information (including any response time allotted to any Party pursuant to this Section).

(viii) In giving its determination, the Independent Auditor shall state what adjustments (if any) are necessary to be made to the Closing Balance Sheet, the calculation of Net Working Capital, Closing Cash, Company Transaction Expenses, and Closing Indebtedness and/or the Schedule of Adjustments solely for the purposes of this Agreement in respect of the matters in dispute between Parent and the Shareholders' Representative and referred to it pursuant to this Section 3.3(c) (and, for the avoidance of doubt, not any other matters in this Agreement or otherwise).

(ix) The Independent Auditor shall determine (using its own legal advice as appropriate) any question of the legal construction of this Agreement but only insofar as it is relevant to the determination of the Closing Balance Sheet, the calculation of Net Working Capital, Closing Cash, Company Transaction Expenses, and Closing Indebtedness and/or the Schedule of Adjustments.

(x) The determination of the Independent Auditor shall, in the absence of manifest error, be final and binding on the Parties.

(xi) All fees and expenses of the Independent Auditor shall be allocated to be paid by Parent and/or the Shareholders' Representative (on behalf of the Shareholders) based upon the percentage which the portion of (i) the contested amount not awarded to each Party by the Independent Auditor bears to (ii) the aggregate amount contested by the Parties and submitted to the Independent Auditor, as determined by the Independent Auditor. As an illustration of the allocation of fees and expenses of the Independent Auditor, if the amount set out in the Shareholders' Representative's Dispute Notice is $1,000,000, but the Parties resolve a portion of the disputed items and refer to the Independent Auditor for resolution disputes in the aggregate amount of $500,000, the Independent Auditor determines that $400,000 of such contested objections are valid and that the Net Working Capital should be increased by that amount (in favor of the Shareholders' Representative), if the amount of the Independent Auditor's fees and expenses were $100,000, then Parent would pay $80,000 {$400,000 (in favor of the Shareholders' Representative)/$500,000 (aggregate contested amount submitted to Independent Auditor) x $100,000 (Independent Auditor's fees and expenses)}and the Shareholders' Representative (on behalf of the Shareholders) would pay the remaining $20,000.

(xii) The Independent Auditor shall act as an expert and, without prejudice to any other rights which they may respectively have under this Agreement, the Parties expressly waive, to the extent permitted by law, any rights of recourse to the courts they may otherwise have to challenge the Independent Auditor's determination, except as it pertains to manifest error.

Notwithstanding anything herein to the contrary, the dispute mechanics contained in this Section 3.3(c) shall be the exclusive mechanics for resolving disputes regarding the Purchase Price adjustments set forth in this Article III, and the date on which such adjustments, if any, are finally determined in accordance with the mechanics set forth in this Section 3.3(c) shall be the "***Determination Date***."

(d) If it is finally determined pursuant to this Section 3.3 that the aggregate Purchase Price paid at Closing as of the Determination Date is less than the Purchase Price as adjusted pursuant to this Section 3.3, then, Parent shall remit such difference to the Paying Agent (with respect to amounts due to Shareholders (not including holders of Vested Company Stock Options)) and the Surviving Corporation (with respect to amounts due to holders of Vested Company Stock Options), as applicable, in cash, which shall be paid to the Shareholders in accordance with the procedures set forth in Article II.

(e) If it is finally determined pursuant to this Section 3.3 that the Purchase Price paid at the Closing is greater than the Purchase Price as adjusted pursuant to this Section 3.3, then the Shareholders' Representative and Parent shall jointly instruct the Escrow Agent to remit such difference to Parent from the Purchase Price Escrow Fund in accordance with Section 3.3(f) below as finally as set forth in this Section 3.3. If the amount owed to Parent pursuant to this Section 3.3 is greater than the remaining amount in the Purchase Price Escrow Fund, then Parent shall have the right to proceed as a payment by the Escrow Agent from the Indemnification Escrow Fund (on a several, but not joint, basis by the Shareholders to the extent of such funds) and, after such Indemnification Escrow Fund has been exhausted, directly against the Shareholders on a several, and not joint, liability basis in accordance with their Pro Rata Portion, and the Shareholders shall be responsible for and shall pay to Parent any such amounts until Parent has collected the full amount owed to Parent under this Section 3.3, *provided, however*, that each Shareholder's responsibility to pay to Parent any such amount will not exceed such Shareholder's Pro Rata Portion of the Purchase Price actually received by such Shareholder.

(f) If, after the Determination Date and the release of any amounts from the Purchase Price Escrow Fund pursuant to Section 3.3(e) above there is any amount remaining in the Purchase Price Escrow Fund, the Shareholders' Representative shall provide an updated schedule, substantially in the form of the Allocation Schedule, setting forth each Shareholder's Capital Stock Pro Rata Portion and Option Pro Rata Portion, as applicable, of the remaining Purchase Price Escrow Fund and the Shareholders' Representative and Parent agree to jointly instruct the Escrow Agent to release such remaining amount (i) to the Paying Agent (with respect to amounts due to Shareholders (other than holders of Vested Company Stock Options)) and (ii) the Surviving Corporation (with respect to amounts due to holders of Vested Company Stock Options), as applicable, for distribution to such Shareholders pursuant to such schedule provided by the Shareholders' Representative.

(g) Any cash payment to be made pursuant to this Article III as a result of any adjustment made in accordance with the mechanics set forth in Section 3.3(c) above shall be paid within five (5) Business Days of the Determination Date by wire transfer of immediately available funds. Any such payment shall be made to such account or accounts as may be designated by the Party (in the case of the Shareholders' Representative, on behalf of the Shareholders) entitled to such payment.

(h) Unless otherwise required by applicable Law, any adjustments to the Purchase Price made pursuant to this Article III shall be treated as a purchase price adjustment for all applicable U.S. federal, state, local and non-U.S. Income Tax purposes (except to the extent treated as imputed interest pursuant to Sections 483 or 1274 of the Code (or any similar provisions of state, local or non-U.S. Tax Laws)).

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the exceptions set forth in the disclosure schedule of the Company addressed to Parent, dated as of the date hereof and delivered to Parent concurrently with the parties' execution of this Agreement (the "***Company Disclosure Schedules***"), the Company represents and warrants to Parent and Merger Sub, as of the date hereof and as of the Closing Date, as follows:

Section 4.1. Organization.

(a) The Company is a validly existing corporation organized pursuant to, and in good standing under, the laws of the jurisdiction of its organization and has full corporate or other power and authority to carry on its business as now conducted by it and to own or lease its properties and assets. Schedule 4.1(a) of the Company Disclosure Schedules sets forth the Company's jurisdiction of organization and each other jurisdiction in which it is qualified to do business. The Company is duly qualified and/or licensed to do business and, where the concept or a similar concept is recognized, is in good standing as a foreign entity in each jurisdiction in which the nature of its business or ownership or leasing of its properties makes such qualification or licensing necessary and where the failure to be so qualified or licensed, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 4.1(b) of the Company Disclosure Schedules contains a complete and accurate list of each of the Company's Subsidiaries containing its name, it jurisdiction of organization, and other jurisdictions in which it is qualified to do business, and its capitalization (including the identity of each equity holder and the amount of equity interests held by each). Each Subsidiary of the Company is an entity duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has full corporate or other power and authority to carry on its business as now conducted by it and to own or lease its properties and assets. Each Subsidiary is duly qualified and/or licensed to do business and, where the concept or a similar concept is recognized, is in good standing as a foreign entity in each jurisdiction in which the nature of its business or ownership or leasing of its properties, or its relationship with personnel in the jurisdiction, makes such qualification or licensing necessary and where the failure to be so qualified or licensed, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Shareholder has granted to any Person any preemptive or other similar rights with respect to any equity interests of any Subsidiary and there are no offers, options, warrants, rights, agreements or commitments of any kind (contingent or otherwise) entered into or granted by the Company or any Shareholder relating to the issuance, conversion, exchange, registration, voting, sale or transfer of any equity interests or other equity securities of any Subsidiary or obligating any Subsidiary or any other Person to purchase or redeem any of such equity interests or other equity securities.

(c) The registered capital (in Czech základní kapitál) of the Czech Subsidiary amounts to CZK 200,000 and has been paid up in full. The Company is the exclusive owner of the 1% equity interest (in Czech podíl) in the Czech Subsidiary. Pond5 Media Ireland Limited is the exclusive owner of the 99% equity interest in the Czech Subsidiary. Subject to registration of the ultimate beneficial owner of the Czech Subsidiary in the Czech Register of Ultimate Beneficial Owners (in Czech Evidence skutečný ch majitelů), the Company and Pond5 Media Ireland Limited are authorized to exercise shareholder's rights with respect to their equity interests in the Czech Subsidiary. The equity interests in the Czech Subsidiary owned by the Company and Pond5 Media Ireland Limited are equity interests which together represent 100% of the Czech Subsidiary's registered capital and votes in the Czech Subsidiary, have been properly issued and fully paid up, are not represented by any equity certificate (in Czech kmenový list) and are freely transferable (being subject only to the approval of the General Meeting of the Czech Subsidiary when transferring the equity interest to a person other than the Czech Subsidiary's current shareholders) and subject to no Encumbrance. The Czech Subsidiary (i) has no subsidiaries and foreign branches; (ii) is not subject to any insolvency or similar proceedings and has neither stopped nor suspended payment of its debts as they fall due, nor became unable to pay its debts, nor otherwise became insolvent and (iii) has a clean criminal record, is not subject to any criminal proceedings or investigation and no such proceedings or investigation threatens.

(d) The Company has heretofore made available to Parent true, correct and complete copies of the organizational documents of the Company and each of its Subsidiaries as in effect on the date of this Agreement. As of the date of this Agreement, the organizational documents of the Company and each of its Subsidiaries are in full force and effect and have not been amended in any respect form the copies made available to Parent.

(e) Except as set forth on Schedule 4.1(e) of the Company Disclosure Schedules, no resolution has been passed and no legal proceedings have been started or threatened in respect of the winding-up or dissolution (or any local law equivalent) of the Company or any of its Subsidiaries, or for the appointment of a liquidator, receiver, administrator or administrative receiver (or similar officer in any jurisdiction) over any or all of the assets of the Company or any of its Subsidiaries.

(f) Schedule 4.1(f) of the Company Disclosure Schedules sets forth a list of the officers, directors and/or managers (or equivalent positions) of the Company and each of its Subsidiaries.

Section 4.2. Capitalization. (a) The number of authorized, issued and outstanding Shares of the Company is set forth on Schedule 4.2(a) of the Company Disclosure Schedules. All of the Shares are owned of record and beneficially by the Shareholders as set forth on Schedule 4.2(a) of the Company Disclosure Schedules, free and clear from Encumbrances and have been issued in compliance in all material respects with all applicable securities Laws and other applicable Laws. The shares of Capital Stock have been validly issued and are fully paid and nonassessable. Neither the Company nor any Shareholder has granted to any Person any preemptive or other similar rights with respect to any of such shares of Capital Stock and there are no offers, options, warrants, rights, agreements or commitments of any kind (contingent or otherwise) entered into or granted by the Company or any of its Subsidiaries or, to the Knowledge of the Company, any Shareholder relating to the issuance, conversion, exchange, registration, voting, sale or transfer of any equity interests or other equity securities of the Company (including the Shares) or obligating the Company or any other Person to purchase or redeem any of such equity interests or other equity securities. Since each of their respective issue dates, no dividends have been declared or paid on any Preferred Stock.

(a) Other than as set forth on Schedule 4.2(b) of the Company Disclosure Schedules, the Company does not own or control, nor has it ever owned or controlled, nor have or had any interest in any shares, nor have or had an ownership interest in any other Person.

Section 4.3. Authority of the Company; No Conflict; Required Filings and Consents.

(a) The Company has the full legal right, capacity and power to execute and deliver this Agreement and the Ancillary Agreements (to the extent a party thereto), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated to be performed by the Company hereby and thereby. The execution and delivery by the Company of this Agreement and the Ancillary Agreements (to the extent a party thereto), the performance of its obligations under, and the consummation of the transactions contemplated by this Agreement and each Ancillary Agreements (to the extent a party thereto) have been duly authorized by all necessary corporate or other action on the part of the Company. This Agreement has been, and the Ancillary Agreements (to the extent a party thereto) delivered at Closing will be, duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery of the other parties hereto and thereto, constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such enforceability is considered in a Proceeding at law or in equity.

(b) Except as set forth on Schedule 4.3(b) of the Company Disclosure Schedules, the execution and delivery by the Company of this Agreement and the Ancillary Agreements (to the extent a party thereto) does not, and the consummation by it of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of any provision of the memorandum or articles of association, statutes, by-laws, operating agreement, organizational documents or other terms of charter or corporate or other regulation of the Company or any of its Subsidiaries, as applicable, (ii) violate any law, rule or regulation applicable to the Company or its Subsidiaries, (iii) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any judgment, court order or consent decree or any Material Contract or any Permit affecting the properties, assets or Business of the Company or its Subsidiaries, or (iv) result in the creation or imposition of any Encumbrance other than a Permitted Encumbrance on any properties or assets of the Company or the Shares.

(c) None of the execution and delivery by the Company of this Agreement or any Ancillary Agreements (to the extent a party thereto) or the consummation of the transactions contemplated hereby or thereby will require any consent, approval, order or authorization of, or registration or filing with, any Governmental Entity on the part of the Company or its Subsidiaries.

(d) The Company Shareholder Approvals are the only votes of the holders of any shares of Capital Stock or other equity interests of the Company necessary for the Company to adopt this Agreement and approve and consummate the Merger and the transactions contemplated hereby.

Section 4.4. Financial Statements.

(a) The Company has delivered to Parent complete copies of the Company's consolidated audited financial statements consisting of the consolidated balance sheet of the Company as at December 31 in each of the years 2019 and 2020 and the related consolidated statements of income, members' equity and cash flows for the year then ended (the "***Audited Financial Statements***") and unaudited financial statements consisting of the consolidated balance sheet as at December 31, 2021, and the related consolidated statements of income, members' equity and cash flows for the year then ended (the "***Unaudited 2021 Financial Statements***") and the consolidated balance sheet of the Company as at March 31, 2022, and the related consolidated statements of income and cash flows by month for the year to date then ended and the related consolidated statement of members' equity for the year to date then ended (the "***Interim Financials***" and together with the Audited Financial Statements and the Unaudited 2021 Financial Statements, the "***Financial Statements***"). The consolidated balance sheet of the Company as of December 31, 2020, is referred to herein as the "***Balance Sheet***" and the date thereof as the "***Balance Sheet Date***."

(b) The Financial Statements are based on, and prepared in accordance with, the books and records of the Company, and present fairly, in all material respects, subject to, in the case of the Interim Financials, normal and recurring year-end adjustments and the absence of notes (which are not material in the aggregate), the consolidated financial position, results of operations and cash flows of the Company and its Subsidiaries as of their historical dates and for the periods indicated. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financials, to normal and recurring year-end adjustments and the absence of notes. The Company maintains a standard system of accounting established and administered in accordance with GAAP.

(c) None of the Company or any of its Subsidiaries will have, after giving effect to the Closing, any Indebtedness. All of the PPP Indebtedness that the Company or any of its Subsidiaries has ever had has been Forgiven and is no longer outstanding. Schedule 4.4(c) of the Company Disclosure Schedule sets forth all PPP Indebtedness that the Company and its Subsidiaries has ever had. The Company has made available complete and correct copies of the Company's application for PPP Indebtedness, application for forgiveness of any PPP Indebtedness, all information submitted to the lender of any PPP Indebtedness in support thereof and a copy of the final approval of the forgiveness of all PPP Indebtedness. The Company's prior PPP Indebtedness constituted one or more "covered loans" as defined in Section 1102(a)(2)(A) of the CARES Act. The Company at all applicable times met the eligibility requirements for application and receipt of any PPP Indebtedness and at all applicable times has been in compliance with the CARES Act with respect to any PPP Indebtedness. The Company used one hundred percent (100%) of the proceeds of any PPP Indebtedness solely for uses of proceeds of PPP Indebtedness that are permitted by 15 U.S.C. 636(a)(36)(F)(i) (as added to the Small Business Act by Section 1102 of the CARES Act) and uses of proceeds of any PPP Indebtedness that are eligible for forgiveness under Section 1106 of the CARES Act and otherwise in compliance with all other provisions or requirements of the CARES Act applicable in order for any PPP Indebtedness to be eligible for forgiveness.

(d) The Company's and its Subsidiaries' system of internal controls over financial reporting is sufficient to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, (ii) that transactions are executed only in accordance with the authorization of management, (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiaries and (iv) regarding the reliability of the Financial Statements. Neither the Company, its Subsidiaries, nor, to the Knowledge of the Company, any employee, auditor, accountant, legal counsel, or representative of the Company or any of its Subsidiaries, has received any written complaint, allegation, assertion or claim regarding the adequacy of such systems and processes or the accuracy or integrity of the Financial Statements. To the Knowledge of the Company, there have been no instances of fraud by the Company or its Subsidiaries, whether or not material, that occurred during any period covered by the Financial Statements.

(e) All accounts payable of the Company and its Subsidiaries that arose after the Balance Sheet Date have been recorded on the accounting books and records of the Company and its Subsidiaries. All outstanding accounts payable of the Company and its Subsidiaries represent valid obligations arising from bona fide purchases of assets or services, which assets or services have been delivered to the Company and its Subsidiaries. Since the Balance Sheet Date, there has not been any failure to pay any accounts payable.

Section 4.5. Tax Matters. Except as set forth on Schedule 4.5 of the Company Disclosure Schedules:

(a) Tax Returns and Payment of Taxes. The Company and each of its Subsidiaries has (i) timely filed all income and other material Tax Returns required to have been filed by it (taking into account any valid extensions), and each such Tax Return is correct and complete in all material respects, and (ii) paid all Taxes required to have been paid by it (whether or not shown on any such Tax Return). As of the Closing Date, the Company will have no liability for any unpaid Taxes accruing after the date of the Company's most recent financial statements, other than Taxes accruing in the ordinary course of business conducted after the date of the Company's most recent financial statements. Neither the Company nor any of its Subsidiaries has executed any waiver of any statute of limitations on, or extended the period for the assessment or collection of, any Tax, in each case, that has not since expired.

(b) Tax Returns Made Available. The copies of the Tax Returns, and any correspondence relating to Tax audits or other Tax controversies, made available to the Parent in the Company's data room are complete and accurate copies of such Tax Returns and other correspondence.

(c) Withholding. The Company and each of its Subsidiaries has complied in all material respects with all applicable Laws relating to the withholding of Taxes with respect to any amounts paid or owing by it to or, in the case of any Subsidiary that is a partnership, any income or gain allocable to, any employee, independent contractor, creditor, customer, stockholder, or other party and has duly withheld and timely paid over to the appropriate Taxing Authority all Taxes required to be so withheld and paid over.

(d) Liens. There are no Encumbrances or liens on the assets of the Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax other than Permitted Encumbrances.

(e) Tax Deficiencies and Audits. No deficiency or other proposed assessment or adjustment for any Tax has been assessed, asserted, proposed, or threatened in writing, by any Taxing Authority against the Company or any of its Subsidiaries which deficiency or other proposed assessment or adjustment has not since been paid in full, settled or withdrawn and no issue giving rise to any such Tax deficiency, assessment or adjustment was of a recurring nature. There are no ongoing, pending or threatened audits, examinations, investigations or other administrative or judicial proceedings with respect to any Taxes of the Company or any of its Subsidiaries.

(f) Tax Jurisdictions. No claim has been made in writing since December 31, 2016, by any Taxing Authority in any jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to Tax in that jurisdiction. Neither the Company nor any of its Subsidiaries is resident for Income Tax purposes in any country other than its country of incorporation.

(g) Closing Agreements and Tax Rulings. Neither the Company nor any of its Subsidiaries has entered into any closing or similar agreement with any Taxing Authority with respect to any Tax matter or has been issued any private letter ruling, technical advice memorandum or similar agreement or ruling relating to Taxes by any Taxing Authority, in each case which would affect the Company's or any of its Subsidiaries' liability for any Taxes at any time after the Closing.

(h) Consolidated Groups, Transferee Liability, and Tax Agreements. Neither the Company nor any of its Subsidiaries (i) has any Tax Sharing Agreement other than any Tax Sharing Agreement solely among the Company and/or any of its current Subsidiaries, (ii) has any liability for (and does not guarantee payment of) the Taxes of any Person (other than the Company or any of its current Subsidiaries) pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract (other than any Commercial Tax Obligation) or by operation of Law or otherwise, or (iii) has ever been a member of any affiliated, combined, consolidated, unitary or similar group for any Tax purpose (other than any such group consisting solely of the Company and/or any of its current Subsidiaries).

(i) Change in Accounting Method. With respect to any taxable period that remains open, neither the Company nor any of its Subsidiaries has agreed to make, or has been or will be required to make, any material adjustment under Section 481(a) of the Code (or any similar provision of state, local or non-U.S. Law) by reason of a change in accounting method or otherwise.

(j) Post-Closing Tax Items. Neither the Company nor any of its Subsidiaries will be required to include any material item of income or gain in, or exclude any material item of deduction or loss from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date, as a result of (A) any change in any method of accounting with respect to any taxable period (or portion thereof) ending on or before the Closing Date under Section 481 of the Code (or any similar provision of state, local or non-U.S. Law), (B) any installment sale, open transaction or intercompany transaction occurring on or prior to the Closing Date (C) any prepaid income received on or prior to the Closing Date or (D) Section 965 or 108(i) of the Code (or, in each case, any similar provision of state, local or non-U.S. Law).

(k) Section 355. Since December 31, 2013, neither the Company nor any of its Subsidiaries has been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code (or any similar provision of applicable state, local or non-U.S. Law).

(l) Listed Transactions; Substantial Understatements. Neither the Company nor any of its Subsidiaries has been a party to, participated in or been a material advisor with respect to, a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b) (or any similar provision of state, local or non-U.S. Law). The Company and each of its Subsidiaries has disclosed on its Tax Returns all positions taken therein that would give rise to a substantial understatement of Tax within the meaning of section 6662 of the Code (or any similar provision of state, local, or non-U.S. Law).

(m) Czech Contractors. No deficiency or other proposed assessment or adjustment for any Tax has been assessed, proposed, or threatened with respect to the Czech Contractors in terms of considering them as employees by the relevant Taxing Authority or other relevant Governmental Entity.

(n) Transfer Pricing. The Company and each of its Subsidiaries is in compliance with applicable transfer pricing Laws and regulations (including section 482 of the Code and its corresponding Treasury regulations and any corresponding or similar provisions of state, local or non-U.S. Law), including the maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology of the Company and each of its Subsidiaries. All tangible property, intangible property, service and other transactions between the Company and any of its Subsidiaries have produced results consistent with the arm's length standard.

(o) United States Real Property. No equity interest in the Company or any of its Subsidiaries is or, as of the Closing Date, will be a "United States real property interest" within the meaning of Section 897(c)(1)(A) of the Code.

(p) Escheat. No asset of the Company or any of its Subsidiaries is currently escheatable or payable to any Governmental Entity under any applicable escheatment or unclaimed property Laws.

(q) COVID-19 Tax Acts and Schemes. Neither the Company nor any of its Subsidiaries has deferred or delayed the payment of any Taxes under any COVID-19 Tax Act or otherwise as a result of the effects of the COVID-19 pandemic. Any of the Company or its Subsidiaries that has made any claim for COVID-19 wage subsidy/job retention schemes before Closing has satisfied and complied with all conditions necessary to avail of such schemes and retained sufficient and proper records to demonstrate compliance with the conditions for availing of such schemes.

(r) Tax Exempt Interest. None of the assets of the Company or any of its Subsidiaries secures any Indebtedness the interest of which is Tax-exempt under Section 103(a) of the Code, and neither the Company nor any of its Subsidiaries is directly or indirectly an obligor or a guarantor with respect to any such Indebtedness.

(s) Powers of Attorney. There is no outstanding power of attorney with respect to any Tax matter of the Company or any of its Subsidiaries.

(t) Compensatory Agreement. The Company has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to the Company pursuant to Section 404, Section 162 or Section 280G of the Code (determined without regard to Section 280G(b)(4)), or an excise tax or additional income tax or acceleration of income to the recipient of such payment pursuant to Section 4999 or Section 409A of the Code.

Section 4.6. Absence of Certain Changes or Events. Since March 31, 2022, except as set forth on Schedule 4.6 of the Company Disclosure Schedules, none of the Company or any of its Subsidiaries have:

(a) suffered any change, event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) suffered any damage, destruction or loss, whether covered by insurance or not, that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(c) granted any increase in the compensation payable to its directors, managers, officers or employees, or independent contractors, except annual increases granted in the ordinary course of business and consistent with past practices, or increases required by applicable Law or any Employee Plan;

(d) other than as required under applicable Law, adopted, amended in any material respect or terminated any Employee Plan other than an Employee Plan not having contractual effect;

(e) entered into any severance agreement with, or granted any severance or termination pay to, any director, manager, officer, employee, group of employees or independent contractor other than as required by applicable Law, any Employee Plan or any agreement in effect on the date hereof;

(f) hired, engaged or terminated any employee having an annual base salary in excess of $100,000;

(g) (i) made, changed or revoked any material Tax election; (ii) amended any material Tax Return; (iii) made, changed or revoked any Tax accounting method; (iv) entered into any closing or similar agreement regarding any material Tax liability or assessment; (v) entered into any Tax Sharing Agreement; (vi) settled or resolved any controversy that relates to a material amount of Taxes; (vii) consented to any extension or waiver of the limitation period applicable to any material Tax audit, material Tax assessment or other material Tax matter or (viii) surrendered any right to claim a material Tax refund;

(h) amended in any material respect its governing or organizational documents;

(i) (A) granted any most favored nation pricing, rebate or volume discount arrangement to any customer, or (B) other than in the ordinary course of business, made any material change in the manner in which the Company or any of its Subsidiaries marketed its products or extended discounts or credits to customers;

(j) experienced any cancellation or been notified in writing of any threatened cancellation of or material breach under any Material Contracts;

(k) experienced any cancellation or termination or been notified in writing of a threatened cancellation or termination of a material Permit;

(l) sold, assigned or transferred, or agreed to sell, assign or transfer any assets or Properties with a fair market or book value in excess of $10,000 (excluding, for the avoidance of doubt, licenses of Intellectual Property Rights), or mortgaged, pledged or imposed, or agreed to mortgage, pledge or impose, any Encumbrance on any of the assets or Properties other than Permitted Encumbrances;

(m) acquired or agreed to acquire in any manner (whether by merger or consolidation, the purchase of an equity interest in or a material portion of the assets of or otherwise) any business or any corporation, partnership, association or other business organization or division thereof of any other Person other than the acquisition or disposition of assets in the ordinary course of business;

(n) incurred or assumed any Indebtedness (other than any Indebtedness under clauses (ix), (x) or (xi) of the definition of Indebtedness) or issued any debt securities or assumed, granted, guaranteed or endorsed, or made any other accommodation arrangement making the Company or any of its Subsidiaries responsible for, the obligations of any other Person, or any loans, advances, capital contributions or investments in any other Person;

(o) made any loan to (or forgiven a loan to), or entered into any other transactions with any of its directors, officers or employees other than transactions with employees in the ordinary course of business, consistent with past practices;

(p) cancelled, satisfied or discharged any debts or claims or amended, terminated or waived any rights of value, other than in the ordinary course of business or as expressly set forth in the Financial Statements;

(q) failed to pay when due any liabilities, except with respect to any such liabilities being contested in good faith and identified on Schedule 4.6 of the Company Disclosure Schedules or as expressly set forth in the Financial Statements;

(r) issued, sold, pledged, transferred or encumbered, or authorized to issue, sell, pledge, transfer or encumber, any Shares or any other ownership or equity interests, as applicable, excluding shares issued in connection with option exercises, or issue, sell, pledge, transfer or encumber, or authorize to issue, sell, pledge, transfer or encumber, any securities convertible into or exchangeable for, or options, warrants or rights to purchase or subscribe for, or entered into any arrangement or contract with respect to the issuance, sale, pledge, transfer or encumbrance of, any Shares or any other ownership or equity interests;

(s) split, combined, redeemed or reclassified, or purchased or otherwise acquired, any Shares or other ownership or equity interests, as applicable;

(t) made any declaration, set aside, established a record date for, or paid any dividends or other distributions or payments in respect of any of its Shares or other ownership or equity interests (whether payable in cash, stock, property or a combination thereof or otherwise);

(u) made any capital expenditures exceeding $25,000 per expenditure or $100,000 in the aggregate;

(v) sold, assigned, licensed, abandoned or otherwise disposed of any Intellectual Property Rights except in the ordinary course of business;

(w) in connection with or as a result of the transactions contemplated by this Agreement or the receipt by the Shareholders of any payment pursuant to Article II or for any other reason, granted, agreed to make or intend to make any payment (in cash or otherwise) to any officer or employee of the Company or any Subsidiary that, upon consummation of the transactions contemplated by this Agreement, will be an officer or employee of Parent or the Company or any of their respective Subsidiaries;

(x) provided a notice to terminate the Contract of employment of any employee of the Company or any of its Subsidiaries;

(y) made any material change in the Company's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(z) entered into, amended or terminated any Contract that would constitute a Material Contract;

(aa) entered into any agreement to do any of the foregoing or taken any action that would result in any of the foregoing;

(bb) formed any Subsidiaries or acquired any interest in any shares or ownership interests in any other Person; or

(cc) received any notice that there has been a loss of, or material order cancellation by, any material customer of the Company (including, without limitation, any customers listed on Schedule 4.18(a) of the Company Disclosure Schedules).

Section 4.7. Property.

(a) The Company and its Subsidiaries have good and valid title or, in the case of leased assets, a valid leasehold interest, to all of the Real Property, material tangible and intangible personal property and assets owned or leased by them, free and clear of all Encumbrances, except (i) Encumbrances for current ad valorem property Taxes not yet due and payable; (ii) Encumbrances for amounts not yet delinquent or which are being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Balance Sheet; (iii) Encumbrances securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords, and other like persons for labor, materials, supplies, or rentals, if any, incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent; (iv) Encumbrances resulting from deposits made in connection with workers' compensation, unemployment taxes or insurance, social security and like laws; (v) Encumbrances resulting from nonexclusive licenses of Intellectual Property Rights; and (vi) Encumbrances that do not materially interfere with the use of such properties and assets as currently used (collectively, "***Permitted Encumbrances***"). This Section 4.7(a) does not apply to Intellectual Property Rights.

(b) Neither the Company nor any of its Subsidiaries owns or has ever owned any Real Property. Schedule 4.7(b) of the Company Disclosure Schedules lists (i) the street address of each parcel of leased Real Property; and (ii) the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property;. With respect to leased Real Property, the Company has delivered or made available to Parent true, complete and correct copies of any leases affecting the Real Property.

(c) Neither the whole nor any portion of any Real Property leased by the Company or any of its Subsidiaries is subject to any governmental decree or order to be sold or is being condemned, expropriated or otherwise taken by any public authority.

(d) No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company or its Subsidiaries.

(e) Neither the Company nor any of its Subsidiaries is a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property.

Section 4.8. Intellectual Property.

(a) Schedule 4.8(a) of the Company Disclosure Schedules contains a true and complete list of (i) all registered and applied for Intellectual Property Rights, and (ii) all other material Intellectual Property Rights (except for trade secrets and unregistered copyrights), in each case, owned or asserted to be owned by the Company or its Subsidiaries ("***Owned Intellectual Property Rights***").

(b) All of the registered Owned Intellectual Property Rights are validly registered and subsisting, all renewal fees in respect of such Intellectual Property Rights which are due have been paid in full and on time, and all other steps required for the continued registration of such Intellectual Property have been taken, in any jurisdiction in which they are registered.

(c) The Company or its Subsidiaries exclusively own and possess all right, title and interest in and to all of the Owned Intellectual Property Rights and each of the Company and its Subsidiaries either owns all rights, title and interest to, or has a valid and enforceable right to use pursuant to a written license agreement (including online and click-through license agreements), all Intellectual Property Rights used or held for use in, or otherwise necessary to, the conduct the Businesses of the Company and its Subsidiaries as currently conducted (collectively, "***Company Intellectual Property Rights***") free and clear of any Encumbrances other than Permitted Encumbrances; provided that the foregoing representations and warranties are made to the Knowledge of the Company with respect to third party patent rights.

(d) No government funding, facilities of a university, college, other educational institution or research center was used in the development of any Owned Intellectual Property Rights. To the Knowledge of the Company, no current or former employee, consultant or independent contractor of the Company or any of its Subsidiaries who was involved in, or who contributed to, the creation of any Owned Intellectual Property Rights has performed services for the government, a university, college or other educational institution, or a research center, during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or any of its Subsidiaries.

(e) The conduct of the Businesses of the Company and its Subsidiaries, including the manufacture, offer for sale and sale of their respective products and services and research and development activities, does not infringe upon, misappropriate, violate or otherwise conflict with (and has not since January 1, 2016 infringed upon, misappropriated, violated or otherwise conflicted with) the Intellectual Property Rights of any third party; provided that the foregoing representation and warranty is made to the Knowledge of the Company with respect to third party patent rights. To the Knowledge of the Company, no third party, including, but not limited to, any Governmental Entity, is currently infringing, misappropriating or violating, in any material respect, any Intellectual Property Right owned by or exclusively licensed to the Company or any of its Subsidiaries. There are no written demands, actions, suits or claims or administrative Proceedings or investigations pending or threatened, that (i) challenge or question the Company's ownership of, the validity of, or the Company's right to use, disclose, license or enforce any Owned Intellectual Property Rights, (ii) require indemnification of any Person by the Company or any of its Subsidiaries with regard to any Owned Intellectual Property Rights, for which notice of such indemnification has been received by the Company, or (iii) assert that the Company or any of its Subsidiaries is infringing upon, misappropriating or otherwise violating any Intellectual Property Rights of any third party.

(f) The Company and its Subsidiaries have taken reasonable steps to maintain the confidentiality of their respective trade secrets and other confidential information or otherwise protect their rights in the Owned Intellectual Property Rights that are material to the Business, and to protect and preserve through the use of customary non-disclosure agreements the confidentiality of confidential information or proprietary data that is owned or held for use by the Company and its Subsidiaries and used in the conduct of the Business as presently conducted and proposed to be conducted. To the Knowledge of the Company, such confidential information or proprietary data requiring protection by statute, regulation or contract, whether or not owned by the Company, its Subsidiaries, Affiliates or third parties, has not been used, disclosed to or discovered by any Person except as permitted pursuant to valid non-disclosure agreements which, to the Knowledge of the Company, have not been breached.

(g) Each current and former employee, independent contractor, consultant and officer of the Company or any of its Subsidiaries who created or developed any inventions, Software, works of authorship or other intellectual property on behalf of the Company or any of its Subsidiaries while employed or engaged by the Company or any of its Subsidiaries ("***Developers***") has executed an agreement with the Company or any of its Subsidiaries regarding confidentiality and proprietary information (the "***Employee Confidentiality Agreements***"). No current or former employee has excluded works or inventions that are material to the Business from his or her assignment of inventions pursuant to such employee's Employee Confidentiality Agreement and the Employee Confidentiality Agreement with each Developer is sufficient to transfer exclusive ownership to the Company of all Company Intellectual Property Rights created or developed by such Developer on behalf of the Company or any of its Subsidiaries. To the Knowledge of the Company, none of is the Developers are in violation of the Employee Confidentiality Agreements.

(h) The consummation of the transactions contemplated hereunder shall not impair, in any material respect, the Company's and its Subsidiaries' rights to own or use the Company Intellectual Property Rights.

(i) The Company and each of its Subsidiaries is in compliance in all material respects with the terms and conditions of all licenses for such Open Source Software used in the operation of the Business. The Company's use of such Open Source Software does not grant to any third party any rights or immunities under any of the Company Products, other than with respect to the Open Source Software itself; the Company does not use any Open Source Software in a manner that requires, as a condition of use, modification and/or distribution of such Open Source Software that any Company Product be (A) disclosed, or distributed made available, offered, licensed or delivered in source code form, (B) licensed for the purpose of making derivative works, (C) licensed under terms that allow reverse engineering, reverse assembly, or disassembly of any kind, or (D) be redistributable at no charge, in each case, other than the Open Source Software itself.

(j) Except for licenses of off-the-shelf Software generally commercially available for an annual or one-time license fee of no more than $50,000 (collectively, "***Off-the-Shelf Software***"), all Software used in the operation of the Business by the Company or its Subsidiaries has been properly licensed from the owner (or sublicensed from the licensee) of such Software (or agent as appropriate) and the Company and its Subsidiaries have sufficient licenses to cover every site, seat, copy, installation, and user of all such Software.

(k) The Company Products substantially perform in accordance with the documentation and other written materials related to such Company Products. To the Knowledge of the Company, all Company Products are free of: (i) any critical defects, including without limitation any critical error or critical omission; and (ii) any disabling codes or instructions and any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disruption, impairment, disablement or erasure of any such Software (or any part thereof).

Section 4.9. Employee Benefit Plans.

(a) Schedule 4.9(a) of the Company Disclosure Schedules sets forth a list as of the date hereof of all material Employee Plans. "***Employee Plans***" means all "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), and each other employment, compensation or benefit, retirement, bonus, incentive, equity, retention, severance, separation or other plan, program, policy, agreement or arrangement, contributed to, sponsored or maintained by or on behalf of the Company or any of its Subsidiaries or any of their Affiliates for the benefit of any current or former employee, officer or director of the Company and its Subsidiaries, or under or with respect to which the Company or any of its Subsidiaries has or would reasonably be expected to have any liability or obligation. Copies of each material Employee Plan and, to the extent applicable, each trust agreement, summary plan description and summary of material modification, and the most recent determination or opinion letter, actuarial valuation and annual report with respect thereto have been made available to Parent.

(b) (i) Each Employee Plan has been maintained and operated in all material respects in accordance with its terms and applicable Law, including ERISA and the Code; (ii) each Employee Plan intended to qualify under Section 401(a) of the Code has received a determination letter from the IRS to the effect that the Employee Plan is qualified under Section 401 of the Code or such Employee Plan utilizes a prototype form plan document and the prototype plan's sponsor has received a favorable opinion or advisory letter from the IRS; (iii) no material claim (other than routine claims for benefits) or lawsuit is pending, or to the Knowledge of the Company, threatened against or in respect of any Employee Plan; and (iv) no Employee Plan is under audit or investigation by the IRS, the U.S. Department of Labor, or any other Governmental Entity.

(c) None of the Company or any of its Subsidiaries contributes to or has any liability, and no event of circumstance exists or has occurred (or would reasonably be expected to occur) that would reasonably be expected to result in the Company or any of its Subsidiaries having any liability, with respect to any plan subject to Section 412 of the Code or Title IV of ERISA, including any "multiemployer plan" (within the meaning of Section 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code). No Employee Plan provides welfare benefit plan benefits or coverage for any current or former employee of the Company or any of its Subsidiaries following termination of employment, except as may be necessary to meet the requirements of Section 4980B(f) of the Code or any similar applicable Law or for a limited period of time following a termination of employment.

(d) Except as set forth on Schedule 4.9(d) of the Company Disclosure Schedules, the consummation of the transactions contemplated by this Agreement, whether alone or in connection with other events, will not give rise to any liability or increase the amount or accelerate the time of payment of compensation or benefits to any current or former employee, officer, director or Shareholder of the Company, any of its Subsidiaries or any of their respective Affiliates.

(e) No Employee Plan is a pension plan which is a defined benefit pension plan or a final salary pension plan or a plan which targets a particular level of benefits and no assurance, promise or guarantee (whether oral or written) has been made or given to any individual of any particular level or amount of benefits to be provided for in respect of him or her on retirement, ill-health, leaving service or death other than under the Employee Plans.

(f) All contributions and expenses due under each Employee Plan have been paid and applied in accordance with the provisions thereof and applicable law.

(g) All benefits (other than refunds of contributions) payable under the Irish Pension Scheme or the Irish Disability Scheme on the death of a member of the Irish Pension Scheme or the Irish Disability Scheme or during periods of sickness or disability of the member are fully insured under a policy effected with an insurance company of good repute and all insurance premiums payable have been paid.

Section 4.10. Contracts.

(a) For purposes of this Agreement, "***Material Contract***" shall mean the following to which the Company or any of its Subsidiaries is a party or any of their respective assets are bound:

(i) any employment, change of control, or severance agreements with any of its employees, officers or directors (other than an agreement with an employee other than an officer, director or manager setting forth an employment at-will relationship without liability to the Company or any of its Subsidiaries upon termination thereof or any agreement required under applicable Law);

(ii) any currently effective collective bargaining or union agreements or other collective agreement or arrangement with respect to its employees;

(iii) any Contract or agreement containing covenants that limit the freedom of the Company or any of its Subsidiaries thereof to engage in any line of business or to compete with any Person, whether within a certain geographic area or otherwise;

(iv) any Contract that contains an "exclusivity" or similar provision or that requires the Company or its Subsidiaries to purchase its total requirements of any product or service from a third party;

(v) any lease or agreement under which it is lessee of any real or personal property owned by any other party, for which the annual rental exceeds $50,000;

(vi) any Contract with any Shareholder or any officer or director of the Company or any of its Subsidiaries, including any such Contract that is also an Employee Plan;

(vii) any Contract for services rendered to the Company involving aggregate consideration in excess of $100,000 that cannot be cancelled by the Company or its Subsidiaries without penalty or without more than 90 days' notice;

(viii) any Contract with any customer, supplier or vendor having an original contract value in excess of $75,000 or an annualized spend with respect to the twelve month period ended December 31, 2021, in excess of $75,000 with respect to the Business;

(ix) any Contract relating to a capital expenditure or for the purchase of any equipment, materials, or supplies in excess of $10,000;

(x) any joint venture, partnership, technical assistance, research and development and other similar collaborative agreement or other arrangement involving a sharing of profits;

(xi) any Contracts with current independent contractors or consultants (or similar arrangements) or any Contracts with former independent contractors or consultants (or similar arrangements) under which the Company or its Subsidiaries has any ongoing rights or obligations;

(xii) any Contract imposing or creating any Encumbrance of any nature, other than Permitted Encumbrances, on or affecting any of the assets or Properties of the Business;

(xiii) any Contract (or group of related Contracts) under which the Company or any of its Subsidiaries has created, incurred, assumed or guaranteed any Indebtedness;

(xiv) any Contract under which any other Person has provided a guarantee on any Indebtedness of the Company or any of its Subsidiaries;

(xv) any current Contract with a Top Customer, Top Supplier or Top Contributor;

(xvi) any Contract that provides any customer of any of the Company or any of its Subsidiaries with pricing, discounts or benefits that change based on the pricing, discounts or benefits offered to the other customer(s) of any the Company or any of its Subsidiaries, including contracts containing "most favored nation" provisions;

(xvii) any settlement agreement entered by any Governmental Entity whereby the Company or any of its Subsidiaries is under an obligation to perform activities, refrain from activities, perform services to a certain standard and/or pay money after the date of this Agreement;

(xviii) any Contract, including licenses, sublicenses, and development collaboration or research agreements (whether inbound, outbound, or otherwise) relating to any Intellectual Property Rights used or held for use in connection with the Business;

(xix) any Contract to which the Company or any of its Subsidiaries (or any of their respective predecessors or assignors) is or has been party in the past five (5) years relating to the purchase, divestiture, spin-out or sale of any other Person, business unit or assets (other than inventory or equipment purchased in the ordinary course of business); or

(xx) any Government Contract other than Standard Contracts.

(b) Each Material Contract is set forth on Schedule 4.10(b) of the Company Disclosure Schedules (other than with respect to those Material Contracts (x) referenced in clause (xviii) of Section 4.10(a) that fall within the definition of "Standard Contracts" and (y) that are Employee Plans) and the Company has made available to Parent correct and complete copies of all Material Contracts, including any amendments thereto. Each Material Contract is valid and binding in accordance with its terms and is in full force and effect. None of the Company or any of its Subsidiaries is in default under or in breach of any Material Contract. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) there is no default or breach by any other party under any Material Contract, (ii) there is no written claim of default or breach by any other party under, or dispute in writing regarding the material terms of, any Material Contract, and (iii) no event has occurred which with the passage of time or the giving of notice or both would constitute a default or breach by the Company or any of its Subsidiaries or by any other party under any Material Contract, or would permit termination, modification or acceleration of any Material Contract or constitute a similar event permitting the termination of the Company's or any of its Subsidiaries' rights under any such Material Contract.

Section 4.11. Compliance with Law. The Company and its Subsidiaries have and are duly complying with all applicable Laws. In the past five (5) years, neither the Company nor or any Subsidiary of the Company has received written notice of, and, to the Knowledge of the Company, none of the Company or any Subsidiary of the Company is under investigation with respect to, any material violation or material noncompliance with any applicable Laws. There is no Order that is or would reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole.

Section 4.12. Labor Matters.

(a) (i) There is no Unfair Labor Practice (as defined in the National Labor Relations Act) complaint, or any similar complaint or claim in any jurisdiction, against the Company or any of its Subsidiaries pending or, the Company's knowledge, threatened before the National Labor Relations Board or other Governmental Entity, including but not limited to the Department of Labor and its bureaus, divisions and offices; (ii) there is no strike or material labor dispute pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries, and no strike or material labor dispute has occurred within the last three years; (iii) no employees of the Company or its Subsidiaries are represented by a works council or a trade union and/or are covered by the terms of any agreement or arrangement with any works council or trade union; and (iv) no union organizing activities are taking place with respect to the Business.

(b) The Company and its Subsidiaries are, and have been during the past periods covered by the applicable statutes of limitation, in compliance in all material respects with all applicable Laws relating to labor and employment matters, including, but not limited to, equal opportunity, discrimination, disability, affirmative action, labor relations, hours of work, overtime, vacation, payment of wages, immigration, workers compensation, worker health and safety, worker classifications, family and medical leaves, plant closings and employee terminations, and no claim, investigation or audit has been asserted during the past five (5) years or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries. During the past five (5) years, no allegations of sexual harassment have been made against any director, manager, officer, or employee of the Company, nor has the Company entered into any settlement agreement related to allegations of sexual harassment or sexual misconduct by any such director, manager, officer, or employee.

(c) Schedule 4.12(c) of the Company Disclosure Schedules sets forth the name of each employee of the Company and its Subsidiaries, together with the employee's position, location, start date, annual or hourly rate of pay, status as exempt or non-exempt under applicable Law, visa status, balance of accrued and unused paid time off, and bonus or other incentive opportunity.

(d) Schedule 4.12(d) of the Company Disclosure Schedules sets forth (i) all former employees of the Company or any of its Subsidiaries who were involuntarily terminated by the Company or any of its Subsidiaries in the last 12 months, including their name, position and reason for termination; (ii) all open workers compensation claims against the Company or any of its Subsidiaries; and (iii) all open unemployment insurance claims against the Company or any of its Subsidiaries.

(e) Each employment agreement and/or offer letter involving aggregate consideration in excess of $100,000 is set forth on Schedule 4.12(e) of the Company Disclosure Schedules. Except as set forth on Schedule 4.12(e) of the Company Disclosure Schedules, the employment of each of the current employees is terminable by the Company or its Subsidiaries at will, and the Company and each of its Subsidiaries has no obligation to provide any particular form or period of notice prior to terminating the employment of any of its current employees except as required under the applicable employment agreement. Except as set forth on Schedule 4.12(e) of the Company Disclosure Schedules, no employee, consultant or independent contractor of the Company or any of its Subsidiaries is located in a jurisdiction outside of the United States.

(f) Except as set forth on Schedule 4.12(f) of the Company Disclosure Schedule, each individual that is substantially engaged in the Business is an employee of the Company or its Subsidiaries, including, but not limited to, for income and employment tax and employee benefit eligibility purposes. During the past five (5) years, all individuals that have been classified or treated by the Company as independent contractors for federal income and/or employment tax purposes have been so classified or treated in all material respects in compliance with applicable Law. Neither the Company nor any of its Subsidiaries have any liability as a co-employer or otherwise with respect to any Person employed by another Person.

(g) Czech Subsidiary has no employees. None of the Czech Contractors carries out and has carried out dependent activities (in Czech závislá činnost) for the Czech Subsidiary. Relationship between the Czech Subsidiary and any Czech Contractor may not be considered a deemed employment relationship under applicable Law.

Section 4.13. Insurance. Schedule 4.13 of the Company Disclosure Schedules sets forth a complete and accurate list as of the date hereof of all insurance policies or programs of self-insurance obtained within the past three (3) years that have a policy limit of greater than $5,000 owned by, or maintained for the benefit of, or respecting which any premiums are paid directly or indirectly by, the Company or any of its Subsidiaries (together, the "***Company Insurance Policies***"), the current annual premiums for each Company Insurance Policy, the types of risk covered and limits of coverage. All Company Insurance Policies are legal, valid, binding and enforceable against the Company and its Subsidiaries, as applicable, in accordance with its terms, and are in full force and effect and all premiums due thereon hereunder have been paid in full. There are no claims related to the Business pending under any such Company Insurance Policies as to which coverage has been questioned, denied or disputed by the applicable insurer. None of the Company or any of its Subsidiaries is in default under, and each of them has complied in all material respects with, the terms and provisions of the Company Insurance Policies. In the last two (2) years, none of the Company or any of its Subsidiaries has received (i) any written notice of cancellation or termination with respect to such Company Insurance Policies, other than in connection with normal renewals of any such insurance policies and programs; (ii) any written notice with respect to any refusal of coverage thereunder; or (iii) any written notice that any issuer of such policy or binder has filed for protection under applicable bankruptcy or insolvency laws or is otherwise in the process of liquidating or has been liquidated.

Section 4.14. Litigation.

(a) Except as set forth on Schedule 4.14(a) of the Company Disclosure Schedules, none of the Company, its Subsidiaries or, to the Knowledge of the Company, any of the Company's or its Subsidiaries' respective officers, directors, or other executive personnel is a party (including by reason of any crossclaim or counterclaim) to any suit or a party to any other Order or Action, by, against, or before any Governmental Entity, Government Official, or non-governmental court, department, commission, board, bureau, agency or other instrumentality (the "***Proceedings***," and each a "***Proceeding***"), nor is anyone asserting or threatening in writing to make the Company, any of its Subsidiaries or, to the Knowledge of the Company any of the Company's or its Subsidiaries' respective officers, directors or other executive personnel a party to any such Proceedings. Except as set forth on Schedule 4.14(a) of the Company Disclosure Schedules, none of the Company or any of its Subsidiaries is a party (including by reason of any crossclaim or counterclaim) to any Proceeding, nor is anyone asserting or threatening in writing to make the Company, its Subsidiaries, or to the Knowledge of the Company, any of the Company's or its Subsidiaries' respective officers, directors, managers, owners or other executive personnel a party to any such Proceeding, that affects the Company or any of its Subsidiaries or their respective assets, Properties or Business. Except as set forth on Schedule 4.14(a) of the Company Disclosure Schedules, none of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of the Company's or its Subsidiaries' respective officers, directors, or other executive personnel is a party (including by reason of any crossclaim or counterclaim) to any Proceeding nor is anyone asserting or threatening in writing to make the Company, any of its Subsidiaries or any of the Company's or its Subsidiaries' respective officers, directors or other executive personnel a party to any such Proceeding, that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. There are no unsatisfied judgments, penalties or awards against or encumbering the Company, any of its Subsidiaries or any of the Company's or its Subsidiaries' respective officers, directors or other executive personnel or their respective assets, Properties or Business.

(b) Schedule 4.14(b) of the Company Disclosure Schedules sets forth all Proceedings to which the Company, any Subsidiary of the Company or any of the Company's or its Subsidiaries' respective officers, directors or other executive personnel has been a party (including by reason of any crossclaim or counterclaim) since January 1, 2019, including any such Proceeding settled, dismissed or otherwise resolved since such date.

Section 4.15. Environmental Matters. Except as set forth on Schedule 4.15 of the Company Disclosure Schedules:

(a) The Company and its Subsidiaries and each of their respective facilities and operations are in material compliance with all Environmental Laws.

(b) The Company and its Subsidiaries are not subject to any Environmental Liabilities and there are no conditions, occurrences, facts or circumstances that would reasonably be expected to result in any Environmental Liabilities, including any such liabilities in connection with any formerly owned or operated facilities or any predecessors in interest of the Company or any Subsidiary.

(c) There are no underground storage tanks, asbestos-containing materials or polychlorinated biphenyls (PCBs) located on any Property and all such Property is free of Hazardous Substances that could require investigation or remediation under Environmental Law.

(d) None of the Company or any of its Subsidiaries is in default under, or in violation of, any binding order, judgment or decree or similar binding judicial or administrative ruling issued pursuant to any Environmental Law.

(e) None of the Company or any of its Subsidiaries has entered into any consent decree or other written agreement with any Governmental Entity in settlement of any Environmental Liability.

(f) The Company and its Subsidiaries have obtained and are in material compliance with all Environmental Permits necessary for the conduct of the Business or operation of its facilities.

Section 4.16. No Brokers. Except as set forth on Schedule 4.16 of the Company Disclosure Schedules (the fees, disbursements and expenses of such entity shall be considered transaction expenses), none of the Company, any of the Company's Subsidiaries, nor to the Knowledge of the Company, any of its Shareholders is obligated for the payment of fees or expenses of any broker or finder in connection with the origin, negotiation, or execution of this Agreement or the other transaction documents or in connection with any transaction contemplated hereby or thereby.

Section 4.17. Condition and Sufficiency of Assets.

(a) The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property that the Company and each of its Subsidiaries own or lease are free from material defects, have been maintained in all material respects in accordance with customary industry practice, are in good operating condition and repair in all material respects, and are suitable for the purposes for which they are used (subject to normal wear and tear and continuing maintenance requirements). The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company and its Subsidiaries, together with all other properties and assets of the Company and its Subsidiaries, constitute all of the rights, property and assets reasonably necessary to conduct the Business as currently conducted.

(b) Each Company Product conforms and has been in conformity in all material respects with the specifications for such Company Product and all applicable contractual commitments warranties. Neither the Company nor any of its Subsidiaries has any liability or obligation for replacement or repair or correction thereof or other damages in connection therewith except liabilities or obligations for replacement or repair or correction incurred in the ordinary course of business. No Company Product is subject to any guaranty, warranty, or other indemnity beyond the applicable standard terms and conditions of sale, license or lease.

(c) All services provided by the Company or any of its Subsidiaries to any third Person, including with respect to Company Products and/or pursuant to Contracts entered into by the Company or any of its Subsidiaries with its customers (the "***Services***") were performed in conformity in all material respects with the terms and requirements of all applicable warranties and all applicable services Contracts. Schedule 4.17(c) of the Company Disclosure Schedules sets forth all Contracts that obligate the Company or any of its Subsidiaries to provide Services (including any maintenance, support or similar Services with respect to the Company Products) after the date hereof (the "***Services Agreements***"). No Services Agreement obligates Parent or the Surviving Corporation or any of its Subsidiaries (or any of their respective Affiliates) after the Effective Time to provide any improvement, enhancement, change in functionality or other alteration the performance of any Company Product or Services. No Services Agreement obligates the Company to provide maintenance, support or similar services with respect to any third-party product (including hardware, software or code).

Section 4.18. Customers and Suppliers.

(a) Schedule 4.18(a) of the Company Disclosure Schedules sets forth a true, correct and complete list of the twenty (20) largest enterprise customers (measured by dollar volume) (the "***Top Customers***") and total purchases, in dollars, from each such Top Customer of the Company and its Subsidiaries, on a consolidated basis, for each of the years ended December 31, 2021 and December 31, 2020. Except as set forth on Schedule 4.18(a) of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries has received any written (including email) notice that any of the Top Customers intend to terminate or materially reduce their business with the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is currently engaged in a material dispute with any Top Customer and no such material dispute is threatened in writing by any such Top Customer. None of the Company or its Subsidiaries is currently engaged in any renegotiation with any Top Customer related to such Top Customer's relationship or Contract with the Company or its Subsidiaries. No Top Customer has requested a price reduction from the Company or its Subsidiaries, other than *de minimis* price reductions.

(b) Schedule 4.18(b) of the Company Disclosure Schedules sets forth a true, correct and complete list of the twenty (20) largest suppliers (measured by dollar volume) (the "***Top Suppliers***") and total purchases, in dollars, from each such Top Supplier of the Company and its Subsidiaries, on a consolidated basis, during each of the years ended December 31, 2021 and December 31, 2020. Except as set forth on Schedule 4.18(b) of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries has received any written (including email) notice that any of the Top Suppliers intend to terminate or materially reduce its business with the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is currently engaged in a material dispute with any such Top Supplier and no such material dispute is threatened in writing by any such Top Supplier. None of the Company or its Subsidiaries is currently engaged in any renegotiation with any Top Supplier related to such Top Supplier's relationship or Contract with the Company or its Subsidiaries. No Top Supplier has requested a price increase from the Company or its Subsidiaries, other than a *de minimis* price increase.

(c) Schedule 4.18(c) of the Company Disclosure Schedules sets forth a true, correct and complete list of the twenty (20) largest contributors (measured by dollar volume of royalties paid) (the "***Top Contributors***") and total royalties paid, in dollars, from each such Top Contributor of the Company and its Subsidiaries, on a consolidated basis, during each of the years ended December 31, 2021 and December 31, 2020. Except as set forth on Schedule 4.18(c) of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries has received any notice, written (including email) or oral, that any of the Top Contributors intend to terminate or materially reduce its business with the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is currently engaged in a material dispute with any such Top Contributor and no such material dispute is threatened by any such Top Contributor. None of the Company or its Subsidiaries is currently engaged in any renegotiation with any Top Contributor related to such Top Contributor's relationship or Contract with the Company or its Subsidiaries. No Top Contributor has requested a price increase or change in the structure or amount of royalty payments from the Company or its Subsidiaries, other than a *de minimis* price increase or change in structure or amount of royalty payments.

(d) Since January 1, 2021, neither the Company nor any of its Subsidiaries has received any cancellations of work or customer Contracts (including Material Contracts) that were, to the Knowledge of the Company, as a result of or related to deficiencies in the services provided by the Company or any of its Subsidiaries.

Section 4.19. Books and Records.

(a) The minute books and other similar records of the Company and each Subsidiary contain complete and correct records of all material actions taken at any meetings of or resolved by the Shareholders, the Company Board of Directors or any committees thereof and of all written consents executed in lieu of the holding of any such meeting and have been maintained in accordance with sound business practices, applicable Laws, and Government Contracts of the Company and its Subsidiaries. All related corporate filings of the Company and each Subsidiary pursuant to applicable Law have been filed and are reflected in the books and records referred to in the foregoing sentence or relevant commercial or company registers, as applicable. At the Closing, all of those books and records will be in the possession of the Company or its Subsidiaries. The books and records of the Company and its Subsidiaries accurately reflect in all material respects the assets, liabilities, business, financial condition and results of operations of the Company and its Subsidiaries. Complete and accurate copies of the foregoing materials have been made available to Parent.

(b) In the last three years, none of the Company accounting or business systems or practices and procedures have been found, pursuant to any written notice by any Governmental Entity, to be non-compliant or inadequate by any Governmental Entity, Government Official, or Company or third-party auditors. Copies of final audit reports from or material correspondence with such auditors in the Shareholders' or the Company's possession have been made available to Parent.

Section 4.20. Undisclosed Liabilities.

(a) Neither the Company nor its Subsidiaries has any material Liabilities that would be required to be set forth on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP, except (a) those that are reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) additional Liabilities incurred since the Balance Sheet Date that have arisen in the ordinary course of business, (c) such other Liabilities that would not be required to be disclosed on a balance sheet prepared in accordance with GAAP and (d) in an amount less than $25,000 individually or $100,000 in the aggregate.

(b) The Company and its Subsidiaries do not have, or expect to have, any material expenses or accruals arising out of, related to, or in connection with the sale of asset assurance products or extended licenses by the Company or its Subsidiaries that include indemnity insurance or similar guarantees for content by the Company or its Subsidiaries.

Section 4.21. Transactions with Shareholders and Affiliates. Other than this Agreement, the Ancillary Agreements, ordinary course agreements incident to employment of any Related Party by the Company or its Subsidiaries (including, for the avoidance of doubt, any invention and non-disclosure, restrictive covenant or similar agreements), indemnification agreements with a current or former director, officer or employee of the Company or any of its Subsidiaries or as set forth on Schedule 4.21 of the Company Disclosure Schedule, no Related Party (a) is a party to any Contract with the Company or any of its Subsidiaries, (b) directly or indirectly owns, or otherwise has any right, title or interest in, to or under, any material property or right, tangible or intangible, that is used by the Company or any of its Subsidiaries, (c) licenses Intellectual Property Rights (either to or from the Company or any of its Subsidiaries), or (d) is indebted to or, in the past three (3) years, has borrowed money from or lent money to, the Company or any of its Subsidiaries (other than any such indebtedness that will be discharged or extinguished at or prior to Closing) (any Contract related to the arrangements described in clauses (a) through (d) hereof, including any such agreements listed (or required to be listed) on Schedule 4.21 of the Company Disclosure Schedule, an "***Affiliate Contract***").

Section 4.22. Permits. (i) Company and its Subsidiaries have obtained all Permits necessary for the lawful use and operation of their respective properties and conduct of their respective businesses, including the Business; (ii) all such Permits are in full force and effect; (iii) each of the Company and its Subsidiaries is in compliance with such Permits, in all material respects; (iv) there are no Proceedings pending or threatened in writing, which would reasonably be expected to result in the revocation, cancellation, suspension or modification of any Permit; and (v) no filing with, notice to, or consent from any Governmental Entity is required in connection with the transactions contemplated by this Agreement in order for a Permit to remain in full force and effect following the Closing. Each Permit held by the Company or any Subsidiary of the Company is listed on Schedule 4.22 of the Company Disclosure Schedule.

Section 4.23. Bank Accounts and Safe Deposit Boxes. Schedule 4.23 of the Company Disclosure Schedules lists the title of each bank account of the Company and each of its Subsidiaries and the bank at which that account is maintained and the names of the Persons authorized to draw against the account or otherwise have access to it. Schedule 4.23 of the Company Disclosure Schedules also contains the same information for each safe deposit box leased by the Company and each of its Subsidiaries.

Section 4.24. Powers of Attorney. None of the Company or any of its Subsidiaries has given a power of attorney or any other authority (express, implied or ostensible) which is still outstanding or effective to any person to enter into any Contract or commitment or do anything on its behalf.

Section 4.25. International Trade Laws. None of the Company or any of its Subsidiaries has received any written notices in the past five (5) years that it is subject to any Proceeding alleging violation of the Customs and International Trade Laws, or that any products or materials imported or exported by or on behalf of the Company or any of its Subsidiaries for which final liquidation has not yet occurred, is subject to an antidumping duty order or countervailing duty order that remains in effect. None of the Company or any of its Subsidiaries, nor any officer or director or agent acting on behalf of any of them, has since January 1, 2017, (a) been or been designated on any list of any Governmental Entity related to Customs and International Trade Laws, including OFAC's Specially Designated Nationals and Blocked Persons List, Non-SDN Menu-Based Sanctions List, Sectoral Sanctions Identifications List Commerce's Denied Persons List, the Commerce Entity List, and State's Debarred List, the Office of Financial Sanctions Implementation Her Majesty's Treasury Consolidated List of Financial Sanctions Targets, European Union sanctions measures or similar lists administered by applicable jurisdictions, (b) been the subject of enforcement under applicable Customs and International Trade Laws, (c) participated in any transaction or business activity involving such a Person or any country or region that is the subject of comprehensive sanctions or involving a Person designated on any list of any Governmental Entity related to Customs and International Trade Laws, (d) exported (including deemed exportation) or re-exported, directly or indirectly, any goods, technical data, technology or services in violation of any Customs and International Trade Laws, including export control or economic sanctions laws, (e) otherwise failed to be in compliance with the requirements of any applicable Customs and International Trade Laws or (f) participated in any transaction connected with any purpose prohibited by Customs and International Trade Laws, including export control and economic sanctions laws, including support for international terrorism and nuclear, chemical or biological weapons proliferation. Neither the Company nor its Subsidiaries has engaged any suppliers who are, to the Knowledge of the Company, debarred, suspended or proposed for debarment or suspension by any Governmental Entity or agency.

Section 4.26. Anti-Bribery and Anti-Money Laundering Compliance. During the past five (5) years, none of the Company, its Subsidiaries, any Affiliate or any respective officer, director, manager, employee, consultant or agent thereof nor any third party while acting on behalf of the Company or its Subsidiaries has unlawfully offered, gifted or promised, directly or knowingly through another person, anything of value to any Government Official, for the purpose of (a) influencing any act or decision of such Government Official in his or her official capacity, inducing such Government Official to do or omit to do any act in violation of their lawful duty, or securing any improper advantage for the Company or its Subsidiaries; or (b) inducing such Government Official to use his or her influence to affect or influence any act or decision of any Governmental Entity, in each of the foregoing (a) and (b) in order to assist the Company or its Subsidiaries in obtaining or retaining business and in violation of applicable anti-corruption laws. Since January 1, 2017, the Company and its Subsidiaries have complied with the applicable provisions of the U.S. Bank Secrecy Act and USA PATRIOT Act of 2001, the U.S. Foreign Corrupt Practices Act of 1977, as amended from time to time, the United Kingdom Bribery Act of 2010, all other national, European Union and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, and other applicable anti-money laundering laws and applicable anti-corruption laws. The Company and its Subsidiaries utilize controls, procedures and an internal accounting controls system sufficient to provide reasonable assurance that violations of applicable anti-bribery or anti-money laundering laws will be prevented and detected. At Closing, the books and records of the Company and its Subsidiaries relating to its global operations are, to the Knowledge of the Company, correct and accurate in all respects, including with respect to payments and expenses.

Section 4.27. Accounts Receivable. All of the accounts receivable of the Business, including the Accounts Receivable, whether reflected on the Balance Sheet or arising since the Balance Sheet Date, have arisen from bona fide transactions in the ordinary course of business and are carried at values determined in accordance with the Accounting Policies. No amount of the Accounts Receivable is subject to any counterclaim or set off that has not been reserved for on the Audited Financial Statements. All material reserves, allowances and discounts with respect to the Accounts Receivable were and are adequate and in accordance with GAAP and consistent in extent with reserves, allowances and discounts previously maintained by the Company and its Subsidiaries in the ordinary course of business. No Person has any Encumbrance, other than Permitted Encumbrances, on any Accounts Receivable and no written or, to the Knowledge of the Company, oral request or agreement for deduction or discount has been made with respect to any Accounts Receivable. Neither the Company nor any Subsidiary of the Company, nor any of their respective Affiliates, has received notice from any customer, or has any reason to believe, that such customer does not intend to pay any Accounts Receivable. In the past five (5) years, to the Knowledge of the Company, neither the Company nor any Subsidiary of the Company has engaged in unusual efforts to accelerate the collection of Accounts Receivable or any activity that reasonably could be expected to result in sales of a product or service with payment terms longer than terms customarily offered by the Company or any Subsidiary of the Company for such product or service.

Section 4.28. Information Technology.

(a) Schedule 4.28(a) of the Company Disclosure Schedules sets forth a true and correct list of all (i) material Software, and (ii) material licenses, leases, development agreements, services or maintenance agreements, in each case, used, held for use or relating exclusively to the Company IT Systems, other than "off-the shelf software" available from third party suppliers on arm's length commercial terms. The Company and its Subsidiaries own or have rights to use (by license or lease) the Company IT Systems used or held for use by the Company and its Subsidiaries in the operation of the Business, and the Company IT Systems are sufficient, including bandwidth, scalability and information storage and processing, for the current need of the Business.

(b) Each of the Company and its Subsidiaries has full and complete copies of all source code for all software which it owns. None of the material software licensed to the Company or its Subsidiaries will be affected or terminated by any Change of Control of any of the Company and its Subsidiaries, and each of the Company and its Subsidiaries is in full compliance with the terms of all source code escrow agreements.

(c) The Company IT Systems are adequate for, and operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required in connection with, the operation of the businesses of the Company and its Subsidiaries as currently conducted. The Company IT Systems have not malfunctioned or failed at any time in the last five (5) years in a manner that resulted in material disruptions to the operation of the Business and that were not remedied or remediated by the Company or a Subsidiary of the Company, as applicable. The Company and each of its Subsidiaries maintains commercially reasonable controls, policies, procedures, and safeguards designed to maintain and protect their material confidential information and the integrity, continuous operation, and security of all Company IT Systems and all Personal Information, and confidential information processed and stored thereon.

(d) The Company and its Subsidiaries have taken commercially reasonable efforts designed to maintain, upgrade and update the Company IT Systems. The Company and its Subsidiaries have taken commercially reasonable actions in accordance with good industry practice to ensure the protection, integrity and security of the Company IT Systems, and all information stored, processed or transmitted thereby, from any unauthorized interruption, access, use or modification by third parties, including by employing commercially reasonable technical measures prudent in the industry in which the Company operates (which may include firewalls, virus and other malicious or disabling code detection and removal programs, and back-up, disaster recovery and business continuity programs). In the last five (5) years, (i) to the Knowledge of the Company, there have been no unauthorized intrusions or breaches of security with respect to the Company IT Systems, and (ii) there have been no material unplanned downtime or service interruption with respect to the Company IT Systems. The consummation of the transactions contemplated under this Agreement will not materially impair the rights of the Company or any of its Subsidiaries to use the Company IT Systems.

(e) The Company IT Systems do not contain third party Software or equipment which is not available from third party suppliers on arm's length commercial terms and contain sufficient user information to enable reasonably skilled personnel in the field to use and operate them without the need for further assistance. There is no reason to believe that any rights to use such third party Software or equipment will not be renewed when they expire on the same or substantially similar terms.

Section 4.29. Privacy and Data Security.

(a) The Company and its Subsidiaries have implemented and complied in all material respects for the past five (5) years with their written privacy policies governing the Processing of Personal Information ("***Privacy Policies***"). The Privacy Policies accurately describe the Company's and its Subsidiaries' Processing of Personal Information. During the last five (5) years, the Company's and its Subsidiaries' Processing of Personal Information was and is in compliance in all material respects with (i) all contractual obligations legally binding on the Company or its Subsidiaries and applicable to the Processing of Personal Information ("***Privacy Contracts***"), (ii) applicable Privacy Laws, and (iii) all published notices of the Company's and its Subsidiaries' relating to the Processing of Personal Information. The Company and each of its Subsidiaries have entered into agreements in substantially the form required by applicable Privacy Laws in relation to the Processing of Personal Information and agreements or agreements governing the international transfer of data where required.

(b) The Company and each of its Subsidiaries have implemented, maintains and complies in all material respects with a written information security program consistent with reasonable and customary industry standards that complies in all material respects with applicable Privacy Laws and Privacy Contracts. The Company and each of its Subsidiaries have taken reasonable steps designed to ensure that any Personal Information or confidential information collected, Processed, or handled by or transferred or disclosed to authorized third parties acting on behalf of the Company or any Subsidiary of the Company provides reasonable safeguards, in each case, in compliance with applicable Privacy Laws and consistent with general industry standards for an entity of the same size and in the same industry as the Company.

(c) To the Knowledge of the Company, during the last five (5) years, none of the Company or any Subsidiary of the Company has experienced any breaches of security (including, but not limited to ransomware) involving the unauthorized access, use, acquisition, or disclosure of Personal Information, or confidential information collected, owned, used, stored, received, Processed, or controlled by or on behalf of the Company and its Subsidiaries (a "***Breach of Security***"). The Company and its Subsidiaries have identified, documented, investigated, and to the extent reasonably technically feasible: (i) contained, (ii) eradicated, (iii) and remediated, each Breach of Security identified by the Company and its Subsidiaries during the last five (5) years. In connection with each Breach of Security, the Company or a Subsidiary of the Company has notified each affected individual, customer, and Governmental Entity to the extent required by the applicable Privacy Laws and/or Privacy Contracts. None of the Company or any Subsidiary of the Company has been notified in writing by any third-party vendor or service provider that the third-party vendor or service provider has suffered an unauthorized acquisition, access, use, or disclosure of (including but not limited to ransomware) involving any Personal Information, or confidential information Processed by the third-party vendor or service provider on behalf of the Company and its Subsidiaries. In the last five (5) years, neither the Company nor any Subsidiary of the Company has received any written (i) complaints, claims, threatened claims, causes of action or notices of inquiry by any Person arising out of or relating to any Breach of Security; or (ii) notices that any Person intends to file a lawsuit relating to any Breach of Security by the Company and its Subsidiaries.

(d) For the past five (5) years, the Company and each of its Subsidiaries have performed a security risk assessment no less frequently than annually that (i) complies with any requirements to perform security assessments under any Privacy Laws; and (ii) materially complies with any obligations to perform security assessments set forth in any Privacy Contracts to which the Company or any of its Subsidiaries is legally bound. The Company and each of its Subsidiaries have taken commercially reasonable steps to address and remediate all material threats and deficiencies identified in each security risk assessment.

(e) Neither the Company nor any Subsidiary of the Company: (i) is or has been, to the Knowledge of the Company, under investigation; (ii) is or has been subject to any Order or Action by any Governmental Entity for a violation of any Privacy Laws; (iii) received any written communication, or the Knowledge of the Company any other communication, notice or complaint that it is under any investigation by any Governmental Entity, consumer advocacy groups, industry or trade organizations, for a violation of any Privacy Laws; or (iv) is or has been subject to any Action with respect to the loss, damage or unauthorized access, use, disclosure, modification or other misuse of Personal Information or alleging non-compliance with Privacy Laws or Privacy Contracts, and no such complaint, request or claim has been threatened in writing.

(f) None of the Company or any of its Subsidiaries has knowingly directed any online services to children under the age of 13. The Company and each of its Subsidiaries has taken commercially reasonable steps to prevent the collection of any Personal Information from children under the age of 13.

(g) To the Knowledge of the Company, the execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby will not: (i) violate any Privacy Laws, Privacy Polices, Privacy Contracts to which the Company or any of its Subsidiaries is subject or by which it is legally bound; (ii) except as set forth in Schedule 4.29(g) of the Company Disclosure Schedules, require the Company or any Subsidiary of the Company to provide any notice to, or seek any consent from, any user, employee, subscriber, supplier, service provider or other third party thereunder as it relates to Personal Information; or (iii) under applicable Privacy Laws, Privacy Policies, or Privacy Contracts, restrict, impair, or limit the ability of the Company or any Subsidiary of the Company to collect, use, Process or disclose the Personal Information on substantially similar terms and conditions as enjoyed immediately before the Closing.

Section 4.30. State Takeover Statutes

. The approval of the Company Board of Directors of this Agreement, the Merger and the transactions contemplated hereby represents all the action necessary to render inapplicable to this Agreement, the Merger and the transactions contemplated hereby, the provisions of Section 203 of the DGCL to the extent, if any, such Section would otherwise be applicable to this Agreement, the Merger and the transactions contemplated hereby, and no "fair price," "moratorium," "control share acquisition" or other state takeover statute or regulation or any anti-takeover provision in the Company's organizational documents is applicable to the Company, the Shares, this Agreement, the Merger or the transactions contemplated hereby.

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub, jointly and severally, represent and warrant to the Company as follows:

Section 5.1. Organization of Parent and Merger Sub. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Each of Parent and Merger Sub is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement and the Ancillary Agreements.

Section 5.2. Authority; No Conflict; Required Filings and Consents.

(a) Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and each Ancillary Agreement (to the extent a party thereto), to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements. The execution and delivery by each of Parent and Merger Sub of this Agreement and each Ancillary Agreement (to the extent a party thereto), the performance of its obligations hereunder and thereunder, and the consummation of the transactions contemplated by, this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of each of Parent and Merger Sub. This Agreement and each Ancillary Agreement (to the extent a party thereto) has been duly executed and delivered by each of Parent and Merger Sub. This Agreement and each Ancillary Agreement (to the extent a party thereto) constitutes a valid and binding obligation of each of Parent and Merger Sub enforceable by the Company against each of Parent and Merger Sub, in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such enforceability is considered in a Proceeding at law or equity.

(b) The execution and delivery by each of Parent and Merger Sub of this Agreement and each Ancillary Agreement (to the extent a party thereto) does not, and the performance of its obligations hereunder and thereunder, and consummation of the transactions contemplated by, this Agreement and the Ancillary Agreements will not, (i) conflict with, or result in any material violation or material breach of any provision of the governing documents of each of Parent and Merger Sub, (ii) violate any law, rule or regulation applicable to Parent or Merger Sub, as applicable, except as would not reasonably be expected to have a material adverse effect on the ability of Parent or Merger Sub to consummate the transactions contemplated hereby (a "***Parent Material Adverse Effect***") or (iii) conflict with or result in a breach of, or give rise to a right of termination of, or accelerate the performance required by the terms of any judgment, court order or consent decree, or any material agreement to which Parent or Merger Sub, as applicable, is party to or constitute a default thereunder, except in each case as would not reasonably be expected to have a Parent Material Adverse Effect.

(c) None of the execution and delivery by each of Parent and Merger Sub of this Agreement or any Ancillary Agreement (to the extent a party thereto), the performance of its obligations hereunder or thereunder, or the consummation of the transactions contemplated by, this Agreement and the Ancillary Agreements requires or will require any consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or third party, except for (i) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws and the laws of any foreign country and (ii) those where the failure to obtain or make, as applicable, such consent, approval, order or authorization of, or registration, declaration or filing would not have a Parent Material Adverse Effect.

Section 5.3. No Brokers. Except as set forth in Schedule 5.3, neither Parent nor Merger Sub is obligated for the payment of fees or expenses of any broker or finder in connection with the origin, negotiation or execution of this Agreement or in connection with the transaction contemplated hereby.

Section 5.4. Merger Sub's Operations. Parent is the sole stockholder of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and has not engaged in any business activities or conducted any operations, and has not incurred Liabilities or obligations of any nature, other than in connection with such transactions.

Section 5.5. Litigation. Neither Parent nor Merger Sub is a party (including by reason of any crossclaim or counterclaim) to any Proceeding, nor to the knowledge of Parent, is anyone asserting or threatening to make Parent or Merger Sub a party to any such Proceeding, that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.6. Financing. Parent will have or have access to as of Closing an amount of cash on hand necessary to consummate the transactions contemplated by this Agreement and pay all Merger Consideration hereunder.

ARTICLE VI. COVENANTS

Section 6.1. Conduct of Business Prior to the Closing. The Company agrees that, except (i) as expressly permitted or required by this Agreement, (ii) as required by applicable Law, or (iii) with the prior written consent of Parent (which shall not be unreasonably conditioned, withheld or delayed), during the period commencing on the date hereof and ending at the earlier of (x) the Closing and (y) termination of this Agreement pursuant to Section 8.1, the Company shall conduct its business and operations (including the business and operations of its Subsidiaries) only in the ordinary course of business consistent with past practice and, to the extent consistent therewith, the Company shall, and shall cause each of its Subsidiaries to, use its reasonable best efforts to preserve intact its business organizations and relationships with third parties and keep available the services of its officers and key employees. Without limiting the foregoing, the Company shall not take, omit to take, or permit any action that would make the representations and warranties contained in Section 4.6 untrue if made as of the Closing Date (without giving effect to any materiality or Material Adverse Effect qualifications in such representations and warranties, other than as set forth in clause (a) thereof).

Section 6.2. Access to Information. From the date hereof until the Closing, to the extent permitted by applicable Law, the Company shall, at the sole cost and expense of Parent, (a) afford Parent and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Material Contracts and other documents and data related to the Company and any of its Subsidiaries; (b) furnish Parent and its Representatives with such financial, operating and other data and information related to the Company and any of its Subsidiaries as Parent or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company to cooperate with Parent in its investigation of the Company and any of its Subsidiaries, *provided*, *however*, that (x) such activities are conducted during regular business hours under reasonable circumstances and do not unreasonably interfere with the operations of the Company, and are subject to the supervision by the Company or its agents, (y) Parent and its Representatives shall not contact or otherwise communicate with the employees, customers, suppliers or other business partners of the Company unless, in each instance, approved in writing in advance by the Company and (z) the Company will not be required to provide access or to disclose information where such access or disclosure would waive the Company's attorney-client privilege (it being agreed that the parties shall use their reasonable best efforts to cause such information to be provided in a manner that would not result in a waiver of attorney-client privilege). No investigation by Parent or other information received by Parent shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement.

Section 6.3. No Solicitation of Other Bids.

(a) The Company shall not, and shall not authorize or permit any of its Affiliates (including the Shareholders) or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Immediately following the execution of this Agreement, the Company shall, and shall direct each of their respective Affiliates and representatives to, terminate any existing discussions or negotiations with any Persons, other than Parent (and its Affiliates and representatives), concerning any Acquisition Proposal, terminate all physical and electronic data room access previously granted to any Persons other than Parent and its Affiliates and Representatives in any Acquisition Proposal and use its reasonable best efforts to cause any Persons other than Parent and its Affiliates and Representatives in possession of non-public information in respect of the Company or its Subsidiaries that was furnished by or on behalf of the Company or its Subsidiaries to return or destroy (and confirm destruction of) all such information.

(b) In addition to the other obligations under this Section 6.3, the Company shall promptly (and in any event within three (3) Business Days after receipt thereof by the Company, any Shareholder or their respective Representatives) advise Parent orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same; *provided*, *however*, the foregoing is subject to any ongoing confidentiality obligations the Company, any Shareholder or their respective Representatives may be subject to. Without limiting the generality of the foregoing, it is understood that any breach of the restrictions set forth in this Section 6.3 by any director or officer of the Company or any of its Subsidiaries or by any other Representative of the Company or its Subsidiaries acting at the Company's or its Subsidiaries' direction shall be deemed to constitute a breach of this Section 6.3 by the Company.

Section 6.4. Notice of Certain Events.

(a) From the date hereof until the Closing, Company shall promptly (and in any event within two (2) Business Days) notify Parent in writing, on the one hand, or Parent shall promptly (and in any event within two (2) Business Days) notify the Company in writing, on the other hand, of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had , or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or a Parent Material Adverse Effect, as the case may be, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company or Parent or Merger Sub, as the case may be, hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2 or Section 7.3, as the case may be, to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Entity or Government Official in connection with the transactions contemplated by this Agreement, except as contemplated in this Agreement;

(iv) any notice or other communication from any Shareholder that such Shareholder intends to be a Dissenting Shareholder; and

(v) any actions commenced or, to the Knowledge of the Company or the knowledge of Parent, as the case may be, threatened against, relating to or involving or otherwise affecting the Company or Parent or Merger Sub, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.14 or Section 5.5 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Parent's or the Company's receipt of information pursuant to this Section 6.4 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company, on the one hand, or Parent or Merger Sub, on the other hand, in this Agreement and shall not be deemed to amend or supplement the Company Disclosure Schedules.

Section 6.5. Governmental Approvals and Consents.

(a) Each Party hereto shall, as promptly as possible, (i) make, or cause or have made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Entities and Government Officials ("***Government Approvals***") that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Agreements. In furtherance and not in limitation of the foregoing, Parent and the Company agree to supply as promptly as possible any additional information and documentary material that may be requested by any Governmental Entities for any Government Approvals. The Company and to Parent shall provide any information or documentary materials to each other necessary to obtain any Government Approvals. The Company and Parent shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. To the extent permitted by applicable law, each of Parent and the Company shall consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to any Government Approvals; *provided* that the final determination as to any presentation, brief, opinion or proposal relating to any Governmental Approvals shall be made by Parent. Each of the Company and Parent shall, in connection with the transactions contemplated hereby, with respect to actions taken on or after the date of this Agreement, without limitation: (1) promptly notify the other of, and if in writing, furnish the other with copies of (or, in the case of oral communications, advise the other of) any communications from or with any Governmental Entity or Government Official with respect to the transactions contemplated hereby, (2) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Entity or Government Official, (3) not participate in any substantive meeting or have any substantive communication with any Governmental Entity or Government Official unless it has given the other party a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Entity or Government Official, gives the other the opportunity to attend and participate therein, (4) furnish the other party's outside legal counsel with copies of all filings and communications between it and any such Governmental Entity or Government Official with respect to the other transactions contemplated hereby and (5) furnish the other party's outside legal counsel with such necessary information and reasonable assistance as the other party's outside legal counsel may reasonably request in connection with its preparation of necessary submissions of information to any such Governmental Entity or Government Official; *provided* that all such material in clauses (1), (2), (3), (4), and (5) in this Section 6.5(a) may be redacted as necessary (I) to comply with contractual arrangements, (II) to address good faith legal privilege or confidentiality concerns and (III) to comply with applicable Law. The Parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Company shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Schedule 4.3(b) of the Company Disclosure Schedules. Notwithstanding the foregoing, nothing in this Section 6.5(b) or otherwise in this Agreement shall require Parent or any of its Subsidiaries to propose, negotiate, effect or agree to, the sale, divestiture, license or other disposition of any assets, properties or businesses of the Parent or any of its Subsidiaries or the Company or otherwise take any action that limits the freedom of action or otherwise restricts any of the assets, properties or businesses of Parent and its Subsidiaries or the Company.

(c) Without limiting the generality of the foregoing, Parent will not, and will not permit any of its Affiliates to, acquire or agree to acquire (by merging or consolidating with, or by purchasing any assets of or equity in, or by any other manner), any Person or portion thereof, or otherwise acquire or agree to acquire any assets, if the entering into a definitive agreement relating to, or the consummation of, such acquisition, merger or consolidation would reasonably be expected to (i) materially increase the risk of not obtaining, the expiration or termination of the applicable waiting period under the HSR Act or (ii) materially increase the risk of any Governmental Entity entering an order prohibiting the consummation of the transactions contemplated by this Agreement.

Section 6.6. Information Statement. The Company shall use its commercially reasonable efforts to obtain a duly executed counterpart to the Shareholder Consent from each Shareholder that holds Capital Stock as expeditiously as possible after the execution and delivery of the Agreement, and the Company shall promptly deliver such executed documents to Parent. The materials submitted to such holders in connection with soliciting the Shareholder Consent shall include the unanimous recommendation of the Company Board of Directors that such holders vote their shares of Capital Stock in favor of the adoption of this Agreement, the Merger and the transactions contemplated hereby. As promptly as reasonably practicable after the filing of the Certificate of Merger, but in no event later than ten (10) calendar days after the date thereof, the Shareholders' Representative shall, or shall cause the Paying Agent to, mail or distribute to all holders of shares of Capital Stock not party to the Shareholder Consent a notice and information statement (an "***Information Statement***") which shall include (a) the notification required by Section 228(e) of the DGCL with respect to the Shareholder Consent, (b) a statement in accordance with Section 262 regarding any appraisal rights of the Shareholders, (c) a request that such holder of shares of Capital Stock execute and deliver to Parent and the Surviving Corporation the Shareholder Consent or other waiver of appraisal rights under Section 262, and (d) such other documents and information about the transactions contemplated hereby as may be required under the DGCL and other applicable Law and as may otherwise be necessary to discharge the duties of the members of the Company Board of Directors to the holders of Shares, together with a copy of this Agreement. Within a reasonable period of time prior to the distribution of the Information Statement to the holders of shares of Capital Stock not party to the Shareholder Consent, the Company or the Shareholders' Representative shall deliver or cause to be delivered to Parent a draft of the Information Statement for Parent's review and comment, and the Company and the Shareholders' Representative, as applicable, shall in good faith consider and incorporate any reasonable comments made by Parent to such draft Information Statement in the final Information Statement provided, however, that Parent shall in no way be responsible for any of the content of the Information Statement except for information supplied in writing by Parent expressly for inclusion therein. Notwithstanding anything to the contrary, time is of the essence with regards to all dates and time periods set forth in this Section 6.6.

Section 6.7. Directors' and Officers' Indemnification.

(a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, indemnify and hold harmless (and advance funds in respect of each of the foregoing) each present and former employee, agent, director and officer of the Company or its Subsidiaries (in each case, when acting in such capacity) (each, together with such person's heirs, executors or administrators, a "***Company Indemnified Party***" and collectively, the "***Company Indemnified Parties***"), against any Damages incurred in connection with any claim, action, suit, Proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of, relating to or in connection with matters existing or occurring prior to or at, but not after, the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company would have been required under applicable Law. In the event of any such Action, Parent shall cooperate with the Company Indemnified Party in the defense of any such Action. To the fullest extent not prohibited by applicable Law, for a period of six (6) years from the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, maintain in effect indemnification, advancement of expenses and exculpation rights no less favorable than the provisions in the organizational documents of the Company or its Subsidiaries or any indemnification agreement of the Company or its Subsidiaries set forth on Schedule 6.7(a) in effect immediately prior to the Effective Time with respect to acts or omissions by any Company Indemnified Party occurring at or prior to the Effective Time, and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any Company Indemnified Party; *provided* that all rights to indemnification in respect of any claim made for indemnification within such period shall continue until the disposition of such action or resolution of such claim.

(b) The obligations of Parent, Merger Sub and the Surviving Corporation under this Section 6.7 may not be terminated or amended in such a manner as to adversely affect any Company Indemnified Party to whom this Section 6.7 applies without the consent of such affected Company Indemnified Party (it being expressly agreed that the Company Indemnified Parties to whom this Section 6.7 applies are third-party beneficiaries of this Section 6.7, each of whom may enforce the provisions of this Section 6.7).

(c) Prior to the Closing Date, the Company shall purchase a "tail" directors' and officers' liability insurance policy for the Company and its current and former directors and officers who are currently covered by the directors' and officers' liability insurance coverage currently maintained by the Company, such tail to provide coverage in an amount not less than the existing coverage and to have other terms not less favorable to the insured persons than the directors' and officers' liability insurance coverage currently maintained by the Company with respect to claims arising from facts or events that occurred on or before the Effective Time for a period of not less than six (6) years. Notwithstanding anything to the contrary in this Agreement, 50% of any premium, applicable taxes, underwriting fee, broker fee and other related costs for such "tail" directors' and officers' liability insurance policy shall be borne by Parent and 50% of any premium, applicable taxes, underwriting fee, broker fee and other related costs for such "tail" directors' and officers' liability insurance policy shall be borne by the Company. Parent shall cause the Surviving Corporation and each of its Subsidiaries to refrain from taking any act that would cause such coverage to cease to remain in full force and effect. In the event Parent or the Surviving Corporation or any of their respective Subsidiaries (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation or any of their respective Subsidiaries assume the obligations set forth in this Section 6.7.

Section 6.8. Further Assurances. From time to time, as and when requested by any Party and at such Party's expense, any other Party shall, without further consideration, execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting Party may reasonably deem necessary to evidence and effectuate the transactions contemplated by this Agreement.

Section 6.9. 280G Approval. The Company shall, prior to the Closing Date, take all actions necessary or required pursuant to Section 280G(b)(5)(B), such that no payments and other benefits contingent on the consummation of the transactions contemplated by this Agreement (within the meaning of Section 280G(b)(2)(A)(i) of the Code) received by any "disqualified individual" (as defined in Section 280G(c) of the Code) with respect to the Company would be a "parachute payment" under Section 280G(b) of the Code and/or would involve any disallowed tax deductions in connection therewith. In connection with the foregoing, prior to any vote being submitted to the Shareholders, the Company shall provide adequate disclosure to the Shareholders of all material facts concerning all payments that, but for such vote, could be deemed "parachute payments" to a "disqualified individual" under Section 280G of the Code in a manner that satisfies Section 280G(b)(5)(B)(ii) of the Code and regulations promulgated thereunder. Within a reasonable period of time prior to the vote, Parent and its counsel shall have the right to review and comment on all documents to be delivered to the Shareholders in connection with such vote and any required disqualified individual waivers or consents, and the Company shall reflect in good faith all reasonable comments of Parent thereon, including a written description of any arrangements entered or to be entered into with or at the direction of Parent or one or more of its Affiliates and a disqualified individual. For the avoidance of doubt, failure of any such "disqualified individual" to execute a waiver contemplated by this Section 6.9 shall not be deemed a breach of this Section 6.9.

Section 6.10. Other Employee Matters. With respect to employees of the Company who continue employment with the Company following the Closing (and only for so long as such employees continue employment with the Company, Parent or its Affiliates following the Closing) (the "***Company Employees***"), Parent shall cause the Company or one of Parent's Affiliates to, for the one (1) year period following the Closing Date, provide (i) base salary or wages and target cash bonus opportunities at levels that are, in each case, at least as favorable to those provided by the Company immediately prior to the Closing and (ii) retirement benefits and other employee benefit plans (other than any equity-based, change in control or transaction based compensation or benefits) that are at least as favorable in the aggregate to those provided by the Company immediately prior to the Closing. Parent shall treat, or cause the Company or one of Parent's Affiliates to, treat, and cause each employee benefit plan, program, arrangement, agreement, policy or commitment sponsored or maintained by Parent or any of its Affiliates following the Closing and in which any Company Employee (or the spouse, domestic partner or any dependent of any such Company Employee) participates or is eligible to participate (each, a "***Parent Benefit Plan***") to treat, for purposes of eligibility to participate and vesting (but, not for purposes of benefit accrual), the service of the Company Employees with the Company or any Subsidiary of the Company attributable to any period before the Closing as service rendered to Parent or its Affiliates, except where credit would result in duplication of benefits. Without limiting the foregoing, to the extent that any Company Employee participates in any Parent Benefit Plan that is a health or other group welfare benefit plan following the Closing during the plan year of such Parent Benefit Plan in which the Closing occurs, Parent and its Affiliates shall use commercially reasonable efforts (A) to cause any pre-existing conditions or limitations, eligibility waiting periods or required physical examinations to be waived with respect to the Company Employees and their eligible dependents, to the extent waived under the corresponding Employee Plan in which the Company Employee participated immediately prior to the Closing, and (B) to recognize for each Company Employee for purposes of applying annual deductible, co-payment and out-of-pocket maximums under any Parent Benefit Plan any deductible, co-payment and out-of-pocket expenses paid by the Company Employee and his or her spouse, domestic partner and dependents under the corresponding Employee Plan during the plan year of such Parent Benefit Plan in which the Closing occurs. This Section 6.10 shall not (i) be treated as an amendment or other modification of any employee benefit plan, agreement or other arrangement, (ii) limit the right of Parent, the Company or any of their respective Subsidiaries to terminate any employee at any time and for any reason, or (iii) create any third-party rights, benefits or remedies of any nature whatsoever in any employee of the Company (or any beneficiaries or dependents thereof) or any other Person that is not a party to this Agreement.

Section 6.11. Termination of Contracts with Affiliates. The Company shall, and shall cause its Subsidiaries to, pay, settle or discharge all account balances owed from the Company or any of its Subsidiaries, on the one hand, and any Related Party, on the other hand, pursuant to each of the Contracts set forth on Schedule 6.11, in each case without any continuing Liability of the Company or any of its Subsidiaries thereunder. Prior to the Closing, the Company shall deliver to Parent written evidence reasonably satisfactory to Parent of each such termination.

Section 6.12. Resignations. At least two (2) Business Days prior to the Closing Date, the Company shall deliver to Parent a true and complete list of the directors, officers, limited liability company managers and other Persons holding similar titles for the Company and each of its Subsidiaries. At or prior to Closing, the Company shall deliver to Parent the resignations of each such director, officer, limited liability company manager or other Person from such positions with the Company or any of its Subsidiaries, effective as of the Effective Time (unless Parent requests that any such resignation not be delivered) substantially in the form attached as Exhibit G.

Section 6.13. Books and Records. For a period of six (6) years after the Closing Date, upon reasonable advance notice, Parent shall, and shall cause its Affiliates to, give the Shareholders' Representative reasonable access, during normal business hours and without undue interruption of Parent's or such Affiliate's business, to all books and records of the Company and its Subsidiaries in the possession of Parent or its Affiliates for periods prior to the Closing at reasonable times, and the Shareholders' Representative shall have the right, at its own expense (on behalf of the Shareholders), to make copies of any such books and records, to the extent (x) reasonably required by a Shareholder in connection with an action by a Governmental Entity with respect to such Shareholders' ownership of Shares prior to the Effective Time, (y) necessary to comply with applicable Law or (z) related to the defense of a claim made by a third Person (other than Parent or its Affiliates). Notwithstanding anything herein to the contrary, and subject to Section 11.19 below, no such access, disclosure or copying shall be permitted (i) for a purpose related to a dispute or potential dispute with Parent, the Surviving Corporation or any of their respective Affiliates, or (ii) if it would result in a loss of any attorney-client privilege, violate any confidentiality agreement or any applicable Law; provided that, in the case of this clause (ii), Parent, Merger Sub and the Shareholders shall cooperate in good faith to develop substitute arrangements, to the extent reasonably possible, that do not result in the loss of such privilege, breach of such agreement or violation of such applicable Law.

Section 6.14. Cyber Security Insurance Tail Policy. Prior to the Closing Date, the Company shall purchase a "tail" cyber security liability insurance policy covering the Company and its Subsidiaries, such tail to provide coverage in an amount not less than the existing coverage and to have other terms not less favorable to the insured Persons than the cyber security liability insurance coverage currently maintained by the Company and its Subsidiaries with respect to claims arising from facts or events that occurred on or before the Effective Time for a period of not less than four (4) years. Notwithstanding anything to the contrary in this Agreement, any premium, applicable taxes, underwriting fee, broker fee and other related costs for such "tail" cyber security liability insurance policy shall be borne equally by the Company and Parent.

Section 6.15. Takeover Statutes. If any "control share acquisition," "fair price," "moratorium" or other similar antitakeover law is or may become applicable to this Agreement or the transactions contemplated hereby, the Company and its Board of Directors shall grant such approvals and take such actions as are reasonably necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

Section 6.16. Closing Conditions. From the date hereof until the Closing, each Party hereto shall, subject to the terms, conditions and limitations contained herein, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VII hereof.

Section 6.17. R&W Policy. Parent shall use commercially reasonable efforts to obtain the R&W Policy, insuring Parent and Surviving Corporation for losses due to breaches of representations and warranties of the Company under Article IV and certain Ancillary Agreements. The R&W Policy shall provide that the insurer may not seek to or enforce any subrogation rights it might have against the Shareholders, or any of them, as a result of any alleged breach of any representation or warranty (except in the case of breaches involving Fraud brought against a person committing such Fraud).

ARTICLE VII. CONDITIONS TO CLOSING

Section 7.1. Conditions to Each Party's Obligation. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction prior to the Closing of the following conditions:

(a) Governmental Approvals. All authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity which must be filed, have occurred or have been obtained on or before Closing, shall have been filed, occurred or been obtained.

(b) No Injunctions or Restraints; Illegality. No provision of any Law and no Order shall prohibit, restrain or make illegal the consummation of the transactions contemplated hereby or by the Ancillary Agreements.

Section 7.2. Additional Conditions to Obligations of Parent and Merger Sub. The respective obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction of each of the following conditions, any of which may be waived in writing exclusively by Parent:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained in Article IV (excluding the Fundamental Representations and Warranties that are not Tax Representations) shall be true and correct as of the Closing Date with the same effect as though made on such date (except for such representations and warranties that are made as of a specific date, which shall speak only as of such date) (determined in each case without regard to any materiality or Material Adverse Effect qualification contained in any representation and warranty), except for such failures to be true and correct that would not in the aggregate reasonably be expected to have a Material Adverse Effect; and (ii) the Fundamental Representations and Warranties that are not Tax Representations shall be true and correct in all respects as of the Closing Date with the same effect as though made on such date (except for such representations and warranties that are made as of a specific date, which shall speak only as of such date) (determined in each case without regard to any materiality or Material Adverse Effect qualification contained in any representation and warranty), except for such failures to be true and correct that, individually and in the aggregate, are *de minimis*.

(b) Performance of Obligations of the Company. The Company and the Shareholders' Representative shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) No Material Adverse Effect. From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

(d) Certificate. Parent shall have received a certificate, dated the Closing Date, signed by the Chief Executive Officer of the Company to the effect that the conditions set forth in Sections 7.2(a), (b) and (c) have been satisfied.

(e) Deliverables. Parent shall have received the deliveries set forth in Section 2.12.

(f) Approval. This Agreement and the Merger shall have been adopted by (i) the holders of not less than 99.87% in voting power of the issued and outstanding shares of Preferred Stock and (ii) the Requisite Shareholder Approval, which approvals shall be contained in a written consent substantially in the form of Exhibit H hereto, which shall include the approvals necessary to obtain the Company Shareholder Approvals (the "***Shareholder Consent***").

(g) Consents. The Company shall have obtained those consents, waivers, authorizations, and approvals of all Governmental Entities set forth on Schedule 7.2(g).

Section 7.3. Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. The representations and warranties of each of Parent and Merger Sub in this Agreement shall be true and correct in all material respects.

(b) Performance of Obligations of Parent and Merger Sub. Each of Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Certificate. The Company shall have received a certificate, dated the Closing Date, signed by an officer or other authorized signatory of each of Parent and Merger Sub to the effect that the conditions set forth in Sections 7.3(a) and (b) have been satisfied.

ARTICLE VIII. TERMINATION

Section 8.1. Termination Events. This Agreement may, by written notice given prior to or at the Closing, be terminated:

(a) by the mutual written consent of the Company and Parent;

(b) by Parent by written notice to the Company if:

(i) (x) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by the Company within ten (10) days of the Company's receipt of written notice of such breach from Parent; provided, however, that no such cure period shall be available or applicable to any such breach, inaccuracy or failure which by its nature cannot be cured, and (y) if not cured on or prior to the Closing Date, such breach, inaccuracy or failure would result in the failure of any of the conditions set forth in Article VII to be fulfilled or satisfied; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available if Parent is then in material breach of any provision of this Agreement and such material breach by Parent would give rise to the failure of any of the conditions specified in Article VII;

(ii) the Closing has not occurred on or before June 30, 2022 (the "***Outside Date***"), or such later date as the Company and Parent may agree upon in writing; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(ii) shall not be available to Parent if such failure shall be due to the failure of Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(iii) the Company fails to deliver to Parent within twenty-four (24) hours of the execution of this Agreement the Shareholder Consent executed by the Requisite Shareholder Approval;

(c) by the Company by written notice to Parent if:

(i) (x) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Parent or Merger Sub pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Parent or Merger Sub, as applicable, within ten (10) days of Parent's receipt of written notice of such breach from the Company; provided, however, that no such cure period shall be available or applicable to any such breach, inaccuracy or failure which by its nature cannot be cured, and (y) if not cured on or prior to the Closing Date, such breach, inaccuracy or failure would result in the failure of any of the conditions set forth in Article VII to be fulfilled or satisfied; provided, however, that the right to terminate this Agreement under this Section 8.1(c)(i) shall not be available if the Company is then in material breach of any provision of this Agreement and such material breach by the Company would give rise to the failure of any of the conditions specified in Article VII; or

(ii) the Closing has not occurred on or before the Outside Date, or such later date as the Company and Parent may agree upon in writing; provided, however, that the right to terminate this Agreement under this Section 8.1(c)(ii) shall not be available to the Company if such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(d) by Parent or the Company if there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Governmental Entity shall have issued an Order restraining or enjoining the transactions contemplated by this Agreement; and such Order shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(d) shall not be available to any Party whose breach of any provision of this Agreement causes such Law or Order to be in effect or the failure of such Law or Order to be removed.

Section 8.2. Effect of Termination. If this Agreement is terminated as permitted by Section 8.1, such termination shall be without Liability of any party (or any stockholder, equityholder, director, officer, employee, agent, consultant or representative of such party) to any other party to this Agreement; provided that if such termination shall result from the willful and material breach by any party hereto, such party shall be fully liable for any and all Damages incurred or suffered by any other party as a result of such failure or willful and material breach. The provisions of this Section 8.2 and Article XI (other than Section 11.7) shall survive any termination hereof pursuant to Section 8.1.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Indemnification of Parent and Merger Sub. From and after the Closing and subject to the limitations contained in this Article IX, each Shareholder will, severally and not jointly, in accordance with such Shareholder's Pro Rata Portion indemnify Parent and Merger Sub, their respective Affiliates (including the Surviving Corporation) and each of their and their Affiliates' respective shareholders, officers, directors, employees, agents, Representatives and successors and assigns (collectively, the "***Parent Indemnified Parties***") and hold the Parent Indemnified Parties harmless against all damages, losses, out-of-pocket expense, Liabilities, fines, claims, forfeitures, obligations, Actions, Taxes, judgments, interest, awards, penalties, fees, costs or expenses (including reasonable out-of-pocket expenses of investigation and reasonable and documented attorneys' fees and expenses in connection with any Action, whether involving a Third-Party Claim or a claim solely between the Parties hereto, to enforce the provisions hereof) and reasonable and documented attorneys' fees (collectively, "***Damages***") that the Parent Indemnified Parties have incurred arising out of: (a) the inaccuracy or breach of any representations and warranties set forth in Article IV of this Agreement or any Ancillary Agreement including any Third-Party Claim alleging facts that, if true, would constitute a breach of any such representation or warranty, (b) a breach of any covenant or other obligation of the Company or any Shareholder contained in this Agreement or any Ancillary Agreement (c) any demand for appraisal or assertion of dissenter's rights by any Shareholder (including the amount per Share payable to the applicable Share in accordance with Section 2.4), (d) any inaccuracy in, or claims from any Shareholder related to or arising out of, the Allocation Schedule, including to the extent any Shareholder is entitled to receive any amounts in excess of the amounts indicated on the Allocation Schedule, (e) Fraud committed by the Company or any of its Subsidiaries (at or prior to the Effective Time), (f) any Pre-Closing Taxes and (g) the Special Indemnification Items.

Section 9.2. Indemnification of Shareholders. From and after the Closing and subject to the limitations contained in this Article IX, Parent will indemnify each Shareholder and its respective officers, directors, and Affiliates (collectively, the "***Shareholder Indemnified Parties***") and hold the Shareholder Indemnified Parties harmless against any Damages that the Shareholder Indemnified Parties have incurred by reason of (a) the inaccuracy or breach by Parent or Merger Sub of any representation or warranty of Parent or Merger Sub contained in Article V of this Agreement or any Ancillary Agreement including any Third-Party Claim alleging facts that, if true, would constitute a breach of any such representations or warranty or (b) by reason of a breach by Parent or Merger Sub of any covenant of Parent or Merger Sub contained in this Agreement.

Section 9.3. Exclusive Remedies. The Parties agree that, notwithstanding anything to the contrary set forth in this Agreement or otherwise, following the Closing, except with respect to (a) the adjustments provided in Article III, (b) claims of Fraud against the Shareholder who committed the Fraud or if such Shareholder had actual knowledge of Fraud committed by (x) the Company or any of its Subsidiaries or (y) any other Shareholder, (c) claims arising out of the Specified Employment Letters or the Restrictive Covenant Agreements, and (d) claims for breaches of any representation or warranty or other agreement made by a Shareholder in a Letter of Transmittal, (x) the indemnification provisions of this Article IX are the sole and exclusive remedies of the Parties pursuant to this Agreement or in connection with the transactions contemplated hereby and (y) to extent permitted by Law, the Parties hereby waive all other rights, claims, remedies or actions with respect to any matter in any way relating to this Agreement or arising in connection with the transactions contemplated hereby, whether under any foreign, federal, state, provincial or local Laws, statutes, ordinances, rules, regulations, requirements or orders at common law or otherwise; provided that nothing in this Section 9.3 shall limit any Party's right to seek and obtain any remedy to which such Party may be entitled pursuant to Section 11.7. For the avoidance of doubt, nothing contained in this Agreement shall be construed to limit the Parent Indemnified Parties' rights or recovery under the R&W Policy.

Section 9.4. Survival of Representations and Warranties. All representations and warranties contained in Article IV and Article V of this Agreement or any Ancillary Agreement shall survive the Closing and shall remain in full force and effect until the date eighteen (18) months following the Closing Date; provided, however, that (i) the Fundamental Representations and Warranties (other than the Tax Representations) shall remain in full force and effect for a period of six (6) years, and (ii) the Tax Representations shall remain in full force and effect until ninety (90) days after expiration of the applicable statute of limitations. Claims for indemnification obligations made under Section 9.1(f) or for any breach of any covenant in Article X shall survive until ninety (90) days after expiration of the applicable statute of limitations. All covenants and agreements of the Parties contained in this Agreement or in any Ancillary Agreement (other than claims for indemnification under Section 9.1(f) or for any breach of any covenant in Article X) and contemplated to be performed prior to the Effective Time shall survive until the date that is eighteen (18) months following the Effective Time. Claims for indemnification obligations made under Section 9.1(g) shall survive until eighteen (18) months following the Closing Date. All covenants and agreements of the Parties contained in this Agreement or in any Ancillary Agreement and contemplated to be performed from or after the Effective Time shall survive for the lesser of (x) a period of three (3) years or (y) eighteen (18) months following the period explicitly specified therein. Claims for Fraud hereunder shall survive for six (6) years; provided that such survival shall be extended pursuant to any applicable tolling provisions under Delaware law that would be applicable with respect to claims for fraud. Each of the foregoing survival periods, as applicable, an "***Indemnification Claims Period***." In the event a claim has been properly made (including written notice having been given to Parent (if the indemnity is sought against Parent and Merger Sub) or the Shareholders' Representative (if the indemnity is sought against the Shareholders), as applicable, on or prior to the expiration of the applicable Indemnification Claims Period (as modified (if applicable) by the proviso in the preceding sentence), and such claim is unresolved as of the expiration of the Indemnification Claims Period (as modified (if applicable) by the proviso in the preceding sentence), then the right to indemnification with respect to such claim shall remain in effect until such matter has been finally determined in accordance with this Article IX. Claims for indemnification by the Parent Indemnified Parties shall be made and resolved as provided in this Agreement and in the Escrow Agreement. It is the express intent of the parties that if the applicable Indemnification Claims Period of an item as contemplated for claims for indemnification pursuant to this Section 9.4 is shorter than the statute of limitations that would otherwise have been applicable to such item, then, by contract, the applicable statute of limitations with respect to claims for indemnification pursuant to this Section 9.4 with respect to such item shall be reduced to the applicable Indemnification Claims Period. For the avoidance of doubt, nothing above or otherwise in this Article IX shall limit or otherwise apply to the obligations of the Shareholders to the Shareholders' Representative Group under this Agreement. Nothing in this Section 9.4 shall, in any event, be deemed to limit any recovery by the Parent Indemnified Parties under the R&W Policy.

Section 9.5. Certain Limitations.

(a) The Shareholders shall not be required to indemnify the Parent Indemnified Parties for those portions of any Damages that were specifically accrued or deducted in determining any adjustments pursuant to Article III. Parent shall not be required to indemnify the Shareholder Indemnified Parties for those portions of any Damages (i) that were specifically accrued or deducted in determining any adjustments pursuant to Article III or (ii) to the extent directly resulting from any breach of the Company's obligations under this Agreement. No Person shall be indemnified more than once for the same Damages.

(b) Except in the case of claims of Fraud, no Shareholder shall have any liability to the Parent Indemnified Parties under Section 9.1(a) (other than with respect to the Fundamental Representations and Warranties) until the aggregate amount of all Damages exceeds $1,050,000 (the "***Deductible***"), and then only to the extent such Damages exceed the Deductible. Notwithstanding the foregoing sentence, the Fundamental Representations and Warranties shall not be subject to the Deductible.

(c) Except in the case of claims of Fraud, Parent shall not have any liability to the Shareholder Indemnified Parties under Section 9.2(a) until the aggregate amount of all Damages exceeds the Deductible, and then only to the extent such Damages exceed the Deductible.

(d) Except in the case of claims of Fraud and subject to Section 11.7, the Shareholders' aggregate liability under Section 9.1(a) and Section 9.1(f) shall not exceed the amount of the Indemnification Escrow Amount. Notwithstanding anything herein to the contrary, except in the case of claims of Fraud and subject to Section 11.7, the Shareholders' shall have no liability under Section 9.1(a) and Section 9.1(f) following the release of the Indemnification Escrow Amount in accordance with Section 9.7 other than for any Continuing Claim. This clause (d) shall in no way limit the Parent Indemnified Parties entitlement to any recovery under the Special Indemnification Escrow Fund.

(e) Except in the case of claims of Fraud and subject to Section 11.7, the Shareholders' aggregate liability under Section 9.1(g) shall not exceed the sum of the Special Indemnification Escrow Amount and the Indemnification Escrow Amount.

(f) Except in the case of claims of Fraud and subject to Section 11.7, Parent's aggregate liability under Section 9.2(a) shall not exceed the amount of the Indemnification Escrow Amount.

(g) Except in the case of claims of Fraud against the Shareholder who committed such Fraud or if such Shareholder had actual knowledge of Fraud committed by (x) the Company or any of its Subsidiaries or (y) any other Shareholder, the aggregate liability of each Shareholder under this Agreement, or in connection with the transactions contemplated by this Agreement, shall not exceed the portion of the Purchase Price actually received by such Shareholder.

(h) Except in the case of claims of Fraud against Parent or Merger Sub, the aggregate liability of Parent under this Agreement shall not exceed the Purchase Price actually paid by or on behalf of Parent.

(i) Except in the case of claims of Fraud against the Company Shareholder who committed such Fraud or if such Shareholder had actual knowledge of Fraud committed by (x) the Company or any of its Subsidiaries or (y) any other Shareholder, any amounts owed by the Shareholders for indemnification to the Parent Indemnified Parties under Section 9.1(a) and Section 9.1(f) shall be satisfied as follows: (i) first, as a payment by the Escrow Agent from the Indemnification Escrow Fund (on a several, and not joint, basis by the Shareholders to the extent of such funds) and, after such Indemnification Escrow Fund has been exhausted, (ii) second, against the R&W Policy; provided that this clause (i) shall in no way limit the Buyer Indemnified Parties entitlement to any recovery under the Special Indemnification Escrow Fund.

(j) Any amounts owed by the Shareholders for indemnification to the Parent Indemnified Parties under Section 9.1(b)-(e) shall be satisfied as follows: (x) first, as a payment by the Escrow Agent from the Indemnification Escrow Fund (on a several and not joint basis by the Shareholders to the extent of such funds) and, after such Indemnification Escrow Fund has been exhausted, (y) second, directly against the Shareholders on a several, and not joint, liability basis in accordance with their Pro Rata Portion, subject to the limitation set forth in Section 9.5(d); *provided* that, in the case of claims of Fraud against such Shareholder who committed such Fraud or if such Shareholder had knowledge of Fraud committed by (x) the Company or any of its Subsidiaries or (y) any other Shareholder, the Parent Indemnified Parties shall not be required to comply with the limitation contained in this Section 9.5(j) solely with respect to such Shareholder.

(k) Any amounts owed by the Shareholders for indemnification to the Parent Indemnified Parties under Section 9.1(g) shall be satisfied as follows: (x) first, as a payment by the Escrow Agent from the Special Indemnification Escrow Fund (on a several and not joint basis by the Shareholders to the extent of such funds) and, after such Indemnification Escrow Fund has been exhausted, (y) second, as a payment by the Escrow Agent from the Indemnification Escrow Fund (on a several and not joint basis by the Shareholders to the extent of such funds).

(l) Any indemnity payment made by the Shareholders to any Parent Indemnified Party, on the one hand, or by Parent to any Shareholder Indemnified Party, on the other hand, pursuant to this Article IX shall be reduced by (A) an amount equal to any insurance proceeds actually received by such indemnified party in respect of such claim (other than proceeds received under the R&W Policy with respect to claims subject to the Initial Retention (as defined in the R&W Policy)) minus the sum of (i) any out-of-pocket expenses (including reasonable and documented attorneys' fees and expenses) relating to the recovery of such proceeds and (ii) any deductibles and increases in premiums as a result of such claim and (B) the actual and permanent cash Income Tax savings recognized in the taxable year in which the applicable Damages are incurred by the Parent Indemnified Party or Shareholder Indemnified Party, as applicable, that results from the Damages giving rise to such indemnity payment, determined using a "with and without" methodology (as determined in good faith by the Parent Indemnified Party or Shareholder Indemnified Party, as applicable). If any actual and permanent cash Income Tax savings described in the preceding sentence is not recognized until after an applicable indemnification payment is payable, such indemnification payment shall not be reduced by the anticipated cash Tax savings but when such actual and permanent cash Income Tax savings is recognized, the Parent Indemnified Party or Shareholder Indemnified Party, as applicable, shall promptly make a cash payment to the indemnifying party in an amount equal to such actual cash Income Tax savings.

(m) Notwithstanding anything to the contrary set forth in this Agreement, a Party's indemnification obligations pursuant to Section 9.1 or Section 9.2 (for the purposes of determining the existence of any inaccuracy or breach of any representation and warranty and calculation of the Damages attributable to such inaccuracy or breach) shall be determined without giving effect to any qualification or exception with respect to "material," "materiality," "materially," "Material Adverse Effect" or similar language with respect to materiality contained in any representation or warranty set forth in Article IV; provided, however, that such qualifications will not be disregarded with respect to Section 4.6(a) and (b) and the definition of "Material Contract".

(n) Notwithstanding anything to the contrary set forth in this Agreement, in the case of a claim of Fraud perpetrated by any Shareholder (solely in its capacity as a Shareholder and not as a director, officer or employee of the Company and not in connection with the Company's making of representations and warranties in this Agreement), such Shareholder shall be solely responsible for any Damages arising therefrom. Any Fraud perpetrated by a Shareholder (solely in its capacity as a Shareholder and not as a director, officer or employee of the Company and not in connection with the Company's making of reps and warranties in this Agreement) will not be imputed to any other Shareholder that did not commit the Fraud; provided that the foregoing shall not alleviate the indemnification obligations of the Shareholders to any Parent Indemnified Party for Fraud committed by (x) the Company or any of its Subsidiaries or (y) any other Shareholder, or if such Shareholder had knowledge of such Fraud committed by the Company or any of its Subsidiaries, as otherwise set forth in this Article IX.

(o) The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance or non-compliance with any covenant or obligation, will not affect the right to indemnification, compensation or other remedy based upon such representations, warranties, covenants and obligations.

(p) Each Shareholder hereby agrees that (i) the availability of indemnification of the Parent Indemnified Parties under this Article IX shall be determined without regard to any right to indemnification, advancement, contribution or reimbursement that such Shareholder may have from the Company or any of its Subsidiaries (whether such rights may arise from or pursuant to applicable Law, Contract, the organizational documents of the Company or any of its Subsidiaries or otherwise), and (ii) such Shareholder shall not be entitled to any indemnification, advancement, contribution or reimbursement from Parent, the Company or any Subsidiary of the Company, or any of their respective Affiliates for amounts for which Parent Indemnified Parties would be entitled to indemnification under this Article IX (determined without regard to any thresholds, deductibles, caps, survival periods or other limitations).

(q) Notwithstanding anything in this Article IX to the contrary, if a claim may be characterized in multiple ways in accordance with this Article IX such that such claim may or may not be subject to different caps, time limitations and other limitations depending on such characterization, then an indemnified party shall have the right to characterize such claim in a manner that maximizes the recovery and time to assert claims permitted in accordance with this Article IX, and may assert the claim under multiple bases for recovery hereunder; provided, however, that the foregoing shall not be interpreted to allow double recovery for the same claim.

(r) Notwithstanding the foregoing, any Parent Indemnified Party seeking indemnification shall use its reasonable best efforts to pursue recovery under the R&W Policy, directors' and officers' tail policy or cyber tail policy, as applicable, with respect to Damages for which they may seek to be indemnified pursuant to this Article IX, only to the extent that such Damages are covered by such policies.

(s) Solely to the extent required by applicable Law, each indemnified party shall take, and cause its Affiliates to take, all commercially reasonable steps to mitigate any Damages upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto. The reasonable costs and expenses of mitigation hereunder shall constitute indemnifiable Damages under this Agreement.

Section 9.6. Terms and Conditions of Indemnification.

(a) Any Party seeking indemnification must give the other Party (provided, however, any notice due to or from a Shareholder shall be made only by or to the Shareholders' Representative) written notice of the claim for Damages (i) stating in reasonable detail the basis on which indemnification is being asserted and the aggregate amount of the Damages or an estimate thereof, in each case to the extent known or determinable at such time, (ii) specifying in reasonable detail the individual items of such Damages included in the amount so stated, and the nature of the misrepresentation, breach or claim to which such item is related (to the extent known or determinable at such time), (iii) specifying the provision or provisions of this Agreement under which such Damages are asserted, and (iv) including copies of all notices and documents (including court papers) served on or received by the indemnified Party (such notice a "***Claim Notice***"); provided, however, that no delay on the part of the indemnified party in notifying any indemnifying party (or providing all of the information described above) shall relieve the indemnifying party from any liability or obligation hereunder unless (and then solely to the extent that) the indemnifying party thereby is materially prejudiced by such failure to give timely notice or to timely provide such information. A Claim Notice may be updated and amended from time to time by delivering an updated or amended Claim Notice to other Party, so long as such update or amendment only asserts bases for Damages reasonably related to the underlying facts and circumstances specifically set forth in such original Claim Notice. All Claims properly set forth in an original Claim Notice or any update or amendment thereto shall remain outstanding until such Claims for Damages have been finally resolved or satisfied.

(b) The respective obligations and liabilities of the Parties to indemnify pursuant to this Article IX in respect of any Damages arising from a claim by a third party (a "***Third-Party Claim***") shall be subject to the following additional terms and conditions:

(i) Parent shall have the right to undertake, by counsel or other representatives of its own choosing, the defense, compromise, and settlement of such Third-Party Claim; provided, however, that to the extent Parent is the indemnified party, Parent shall not, without the prior written consent of the Shareholders' Representative (such consent not to be unreasonably withheld, conditioned or delayed), consent to a compromise or settlement of any claim.

(ii) In the event that Parent is the indemnified party and shall elect not to undertake such defense, or shall fail to defend or fail to diligently prosecute the defense of such Third-Party Claim, the indemnifying party, shall have the right to undertake the defense, compromise or settlement of such claim, by counsel or other representatives of its own choosing; provided, however, that the indemnifying party shall not, without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), consent to a compromise or settlement of such claim; provided, however, that Parent may withhold its consent in its sole discretion for the compromise or settlement of any claim that (x) seeks an injunction or other equitable relief against Parent, its Subsidiaries or Affiliates (including the Surviving Corporation), (y) includes any admission of guilt, culpability, fault or wrongdoing, or (z) results in money damages that are the responsibility of Parent, its Subsidiaries or Affiliates (including the Surviving Corporation).

(iii) Notwithstanding anything in this Section 9.6 to the contrary, (A) in the event that the indemnifying party undertakes defense of any claim, the indemnified party shall have the right to participate in the defense, compromise or settlement of the claim at its own cost and expense; provided that if in the reasonable opinion of counsel to the indemnified party, (x) there are legal defenses available to an indemnified party that are different from or additional to those available to the indemnifying party or (y) there exists a conflict of interest between the indemnifying party and the indemnified party that cannot be waived, the indemnifying party shall be liable for the reasonable fees and expenses of counsel to the indemnified party in each jurisdiction for which the indemnified party determines counsel is required and (B) in the event the indemnifying party and the indemnified party are unable to cooperate or agree with respect to the defense, consent, settlement or compromise of any claim, the Parties shall engage an independent arbitrator to consult with the indemnifying party, the indemnified party and their respective counsels and other representatives in connection with such claim, and the decision of the arbitrator as to the defense, consent, settlement or compromise of any claim shall be binding and conclusive upon the Parties to this Agreement.

For purposes of this Article IX, (i) if the Shareholders comprise the indemnifying party, any references to the indemnifying party (except provisions relating to an obligation to make or a right to receive any payments) will be deemed to refer to the Shareholders' Representative and (ii) if a Shareholder Indemnified Party comprises the indemnified party, any references to the indemnified party (except provisions relating to an obligation to make or a right to receive any payments) will be deemed to refer to the Shareholders' Representative. For the avoidance of doubt, in no event shall the Shareholders' Representative have an obligation to provide any indemnification, have an obligation to pay or incur costs or expenses (other than on behalf of the Shareholders) or otherwise have any liability hereunder.

Section 9.7. Resolution of Conflicts

(a) Uncontested Claims. If, within thirty (30) days after a Claim Notice is delivered to a Party (such 30-day period, the "***Objection Period***"), the receiving Party either consents in writing to the Claim Notice, or does not contest all or any portion of such Claim Notice in writing to the other Party as provided in Section 11.1, then the receiving Party shall be conclusively deemed to have agreed, on behalf of all indemnifying parties, to the recovery by each applicable indemnified party of the full amount of Damages (or, if a portion of the Claim Notice is contested, the uncontested portion thereof) (subject to the limitations contained in this Article IX) arising out of or resulting from the matters specified in the Claim Notice, including in the case of indemnification by the Shareholders, the delivery to Parent of all or a portion of the Indemnification Escrow Fund and Special Indemnification Escrow Fund, as applicable, to satisfy such Damages and the recovery from the indemnifying parties of any amounts in excess of the Indemnification Escrow Fund and Special Indemnification Escrow Fund, as applicable, (subject to the limitations set forth in this Article IX), and, without further notice, to have stipulated to the entry of a final judgment for damages against the indemnifying parties for such amount in any court having jurisdiction over the matter where venue is proper.

(b) Contested Claims. If, during the Objection Period, the Party receiving the Claim Notice delivers to the other Party written notice contesting all or any portion of a Claim Notice (the contested portion, a "***Contested Claim***"), then such Contested Claim shall be resolved by either (i) a written settlement agreement executed by Parent and the Shareholders' Representative or (ii) in the absence of such a written settlement agreement within 30 days following receipt of the written notice of a Contested Claim (or such longer period as agreed in writing by Parent and the Shareholders' Representative), in accordance with the terms and provisions of Section 9.7(c).

(c) Resolution of Contested Claims. If Parent and the Shareholders' Representative do not enter into a written settlement agreement resolving a Contested Claim during the period contemplated by Section 9.7(b)(ii), either Parent or the Shareholders' Representative may bring suit in accordance with Section 11.6 to resolve the Contested Claim. Final judgment upon any award rendered by the trial court may be entered in any court having jurisdiction. Notwithstanding the foregoing, if Parent and the Shareholders' Representative mutually agree in their sole discretion, Parent and the Shareholders' Representative may submit a Contested Claim to alternative dispute resolution prior to, or in lieu of, pursuing the claim in court.

(d) Payment of Claims. If any Damages are determined or agreed to be owed to any Parent Indemnified Party in accordance with this Section 9.7 (such amount, the "***Owed Amount***"), then, (i) with respect to any such Owed Amount that, pursuant to the terms of this Agreement, shall be satisfied by amounts remaining in the Indemnification Escrow Fund or the Special Indemnification Escrow Fund, as applicable, the Shareholders' Representative and Parent shall execute and deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to release to Parent from the Indemnification Escrow Fund or the Special Indemnification Escrow Fund, as applicable, the Owed Amount (or, if such amount exceeds the amounts then remaining in the Indemnification Escrow Fund or Special Indemnification Escrow Fund, as applicable, the entire remaining Indemnification Escrow Fund and Special Indemnification Escrow Fund, as applicable) and (ii) with respect to any such Owed Amount that, pursuant to the terms of this Agreement, a Parent Indemnified Party shall be entitled to recover directly from a Shareholder, each Shareholder required to provide such indemnification shall, as promptly as reasonably practicable following the date such Owed Amount is determined or agreed to be owed, pay to such Parent Indemnified Party in immediately available funds the amounts owed by such Shareholder.

Section 9.8. Indemnification Escrow Fund and Special Indemnification Escrow Fund.

(a) Within five (5) Business Days following the eighteen (18) month anniversary of the Closing Date (the "***Escrow Release Date***"), Parent and the Shareholders' Representative shall jointly instruct the Escrow Agent to release to the Paying Agent and the Surviving Corporation, as applicable, from the Indemnification Escrow Fund (pursuant to the Escrow Agreement) in an amount equal to: (i) the Indemnification Escrow Fund remaining as of the Escrow Release Date, minus (ii) any amounts asserted in good faith by Parent in any Claim Notice with respect to a claim subject to the Indemnification Escrow Fund delivered to the Shareholders' Representative at or prior to 11:59 p.m. (New York time), on the Escrow Release Date, but not resolved, at or prior to such time (each such claim a "***Continuing General Claim***" and, such amount, the "***Retained General Indemnity Amount***") for further distribution by (x) the Paying Agent to the Shareholders (other than the holders of Vested Company Stock Options) that delivered a properly executed Letter of Transmittal in accordance with such Shareholder's Capital Stock Pro Rata Portion and (y) the Surviving Corporation to each holder of Vested Company Stock Options that delivered a properly executed Option Surrender Agreement in accordance with such Shareholder's Option Pro Rata Portion, such amount to be paid by the Surviving Corporation to each such Shareholder through its standard payroll procedures, less any applicable withholding, no later than five (5) Business Days after the first or second regularly scheduled payroll date following the date that the Surviving Corporation receives such amount form the Escrow Agent. The Escrow Agent shall continue to hold the Retained General Indemnity Amount in accordance with Section 9.8(c) and the Escrow Agreement.

(b) Within five (5) Business Days following the Escrow Release Date, Parent and the Shareholders' Representative shall jointly instruct the Escrow Agent to release to the Paying Agent and the Surviving Corporation, as applicable, from the Special Indemnification Escrow Fund (pursuant to the Escrow Agreement) in an amount equal to: (i) the Special Indemnification Escrow Fund remaining as of the Escrow Release Date, minus (ii) any amounts asserted in good faith by Parent in any Claim Notice with respect to a claim subject to the Special Indemnification Escrow Fund delivered to the Shareholders' Representative at or prior to 11:59 p.m. (New York time), on the Escrow Release Date, but not resolved, at or prior to such time (each such claim a "***Continuing Special Claim***" and, such amount, the "***Retained Special Indemnity Amount***") for further distribution by (x) the Paying Agent to the Shareholders (other than the holders of Vested Company Stock Options) that delivered a properly executed Letter of Transmittal in accordance with such Shareholder's Capital Stock Pro Rata Portion and (y) the Surviving Corporation to each holder of Vested Company Stock Options that delivered a properly executed Option Surrender Agreement in accordance with such Shareholder's Option Pro Rata Portion, such amount to be paid by the Surviving Corporation to each such Shareholder through its standard payroll procedures, less any applicable withholding, no later than five (5) Business Days after the first or second regularly scheduled payroll date following the date that the Surviving Corporation receives such amount form the Escrow Agent. The Escrow Agent shall continue to hold the Retained Special Indemnity Amount in accordance with Section 9.8(c) and the Escrow Agreement. As used in this Agreement, "***Continuing Claim***" shall mean, as context requires, a Continuing General Claim or a Continuing Special Claim, and "***Retained Indemnity Amount***" shall mean, as context requires, the Retained General Indemnity or the Retained Special Indemnity Amount.

(c) Following the Escrow Release Date, within two (2) Business Days after resolution and payment of a Continuing Claim, or to the extent that Parent determines in good faith that any portion of the Retained Indemnity Amount is no longer reasonably necessary to satisfy all indemnification obligations referred to in Section 9.7(c), Parent and the Shareholders' Representative shall jointly instruct the Escrow Agent to release to the Paying Agent and the Surviving Corporation, as applicable, from the Indemnification Escrow Fund or Special Indemnification Escrow Fund, as applicable, (pursuant to the Escrow Agreement) in an amount equal to (i) the Retained Indemnity Amount as of the date of such resolution and payment or the date of such determination, as the case may be (as reduced from time to time pursuant to the terms of this Agreement), minus (ii) the Retained Indemnity Amount related to any unresolved Continuing Claims (which amounts will continue to be held as the Retained Indemnity Amount pursuant to the Escrow Agreement and this Section 9.8(c)) for further distribution by (i) the Paying Agent to the Shareholders (other than the holders of Vested Company Stock Options) that delivered a properly executed Letter of Transmittal in accordance with such Shareholder's Capital Stock Pro Rata Portion and (ii) the Surviving Corporation to each Shareholder that holds Vested Company Stock Options, that delivered a properly executed Option Surrender Agreement in accordance with such Shareholder's Option Pro Rata Portion, such amount to be paid by the Surviving Corporation to each such Shareholder through its standard payroll procedures, less any applicable withholding, no later than five (5) Business Days after the first or second regularly scheduled payroll date following the date that the Surviving Corporation receives such amount form the Escrow Agent. Upon final resolution of all Continuing Claims, Parent and the Shareholders' Representative shall jointly instruct the Escrow Agent to release any remaining portion of the Retained Indemnity Amount in accordance with this Section 9.8(c) and the Escrow Agreement.

ARTICLE X. CERTAIN TAX MATTERS

Section 10.1. Tax Returns; Tax Contests. Parent shall file, or cause the Company to file, all Tax Returns of the Company or any of its Subsidiaries that are due after the Closing Date with respect to any Pre-Closing Tax Period (including any Straddle Period). Parent shall control any audit or other administrative or judicial proceeding related to any Taxes of the Company or any of its Subsidiaries for a Pre-Closing Tax Period, including any Straddle Period (a "***Pre-Closing Tax Contest***"); provided that, if any Pre-Closing Tax Contest could reasonably be expected to give rise to an indemnification claim pursuant to Section 9.1, Parent shall promptly notify Shareholders' Representative of the initiation of such Pre-Closing Tax Contest and keep the Shareholders' Representative reasonably apprised of all material developments with respect to such Pre-Closing Tax Contest.

Section 10.2. Transfer Taxes. Notwithstanding anything to the contrary herein, all real estate transfer, stock transfer, documentary, sales, use, stamp, recording and other similar Taxes (including any related penalties, additions to Tax and interest) imposed in respect of the Merger, excluding, for the avoidance of doubt, any Taxes imposed on or measured by income, profits or gains, which shall be payable one hundred percent (100%) by the Shareholders (such non-excluded Taxes, "***Transfer Taxes***"), shall be paid fifty percent (50%) by Parent and fifty percent (50%) by the Shareholders. If any amount of Transfer Taxes is known prior to Closing (or the finalization of the Purchase Price pursuant to Section 3.3), the Shareholders' fifty percent (50%) share of such Transfer Taxes shall be included as a Company Transaction Expense. With respect to any Tax Returns and other documentation in respect of Transfer Taxes required to be filed by Parent, the Company or any of their respective Affiliates, Parent shall file or cause the Company to file all necessary Tax Returns and other documentation with respect to all Transfer Taxes and the Shareholders' shall, no later than two (2) Business Days prior to the due date for filing each such Tax Return, pay to Parent fifty percent (50%) of all Transfer Taxes attributable to such Tax Return (to the extent not treated as a Company Transaction Expense). With respect to any Tax Returns and other documentation in respect of Transfer Taxes required to be filed by the Shareholders or any of their respective Affiliates, the Shareholders' shall file or cause to be filed all necessary Tax Returns and other documentation with respect to all Transfer Taxes and Parent or the Company shall, no later than two (2) Business Days prior to the due date for filing each such Tax Return, pay to the Shareholders' fifty percent (50%) of all Transfer Taxes attributable to such Tax Return. The Parties shall cooperate in securing any available exemptions from or reductions in any Transfer Taxes and in providing any required signatures or authorizations. Notwithstanding anything to the contrary in this Agreement, the Shareholders' Representative shall have no obligation to prepare or file any Tax Return.

Section 10.3. Tax Sharing Agreements. All Tax Sharing Agreements between the Company and/or any of its Subsidiaries on the one hand, and any Shareholders and/or any Affiliates of any Shareholders on the other hand, shall be terminated or modified prior to the Closing so as to cause there to be no continuing liability on the part of the Company or any of its Subsidiaries.

Section 10.4. Tax Treatment of Indemnification Payments. Unless otherwise required by applicable Laws, any indemnification payment made pursuant to Article IX of this Agreement shall be treated by all parties as an adjustment to the purchase price for all applicable U.S. federal, state, local and non-U.S. Income Tax purposes.

Section 10.5. Allocation of Taxes with Respect to Straddle Periods. For all purposes of this Agreement, any Tax liability with respect to any Straddle Period shall be apportioned between the pre-Closing and post-Closing portions of such Straddle Period based on an interim closing of the books as of the end of the Closing Date, except for any ad valorem property or similar Taxes, which shall be prorated on a daily basis. Notwithstanding anything to the contrary in the preceding sentence, any Parent Closing Date Tax shall be allocable to the post-closing portion of the applicable Straddle Period.

Section 10.6. Post-Closing Tax Actions. Until after such time as there are no funds remaining in the Special Indemnification Escrow Fund or Indemnification Escrow Fund, in each case, with which to indemnify any Purchaser Indemnified Party in respect of any Tax claim, without the prior written consent of the Shareholders' Representative (not to be unreasonably withheld, delayed or conditioned) neither Parent nor any of its Affiliates (including the Company and its Subsidiaries following the Closing) shall (A) voluntarily amend (i.e., not amend as the result of any Tax audit or other Tax controversy) any Tax Return of the Company or any of its Subsidiaries with respect to any Pre-Closing Tax Period, (B) initiate any voluntary disclosure agreements or similar procedures with respect to any Tax matter of the Company or any of its Subsidiaries with respect to any Pre-Closing Tax Period or (C) voluntarily make or change any Tax election or voluntarily change any method of Tax accounting with respect to any Pre-Closing Tax Period.

ARTICLE XI. MISCELLANEOUS

Section 11.1. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed given upon the earlier of actual receipt or (a) when delivered by hand providing proof of delivery; (b) on the next Business Day if transmitted by national overnight courier (with confirmation of delivery); or (c) on the date sent by email (provided that no "bounce back" or similar message of non-delivery is received with respect thereto); provided that, with respect to notices delivered to the Shareholders' Representative, such notices must be delivered solely via email by way of a PDF attachment thereto (provided that no "bounce back" or similar message of non-delivery is received with respect thereto). Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) if to Parent, Merger Sub or the Surviving Corporation:

Shutterstock, Inc.
350 Fifth Avenue, 21st Floor
New York, New York 10118
Attention: General Counsel
Email: counsel@shutterstock.com

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

Cahill Gordon & Reindel LLP
32 Old Slip
New York, New York 10005
Attention: Kimberly C. Petillo-Décossard, Esq. & Ross E. Sturman, Esq.
Email: kpetillo-decossard@cahill.com & rsturman@cahill.com

(b) if, prior to the Closing, to the Company:

Pond5, Inc.
251 Park Avenue South, 7th Floor
New York, NY 10010
Attention: Legal Department
Email: legal@Pond5.com

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

Goodwin Procter LLP
620 Eighth Avenue
New York, New York 10018
Attention: Daniel A. Lang; Andrew R. Pusar
Email: DLang@goodwinlaw.com; APusar@goodwinlaw.com

if to the Shareholders' Representative:

Fortis Advisors LLC
Attention: Notices Department (Project Piranha)
Email: notices@fortisrep.com

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

Goodwin Procter LLP
620 Eighth Avenue
New York, New York 10018
Attention: Daniel A. Lang; Andrew R. Pusar
Email: DLang@goodwinlaw.com; APusar@goodwinlaw.com

Section 11.2. Interpretation. The words "hereof," "herein," "hereto" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents, headings and captions contained herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits, Annexes and Schedules are to Articles, Sections, Exhibits, Annexes and Schedules of this Agreement unless otherwise specified and references to clauses without a cross-reference to a Section or subsection are references to clauses within the same Section or subsection. All Exhibits, Annexes and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit, Annex or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. Unless the context otherwise requires, the terms "neither," "nor," "any," "either" and "or" are not exclusive. "Writing," "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References (i) to "$" and "dollars" are to the currency of the United States (and to the extent any amounts are not referenced in the currency of the United States, such amounts shall be calculated on an as converted basis to the currency of the Unites States using the spot exchange rate as of the close of business on the Closing Date) and (ii) to "days" shall be to calendar days unless otherwise indicated. References to "from" or "through" any date mean, unless otherwise specified, from and including or through and including such date, respectively. No summary of this Agreement or any Exhibit, Annex, Schedule or other document delivered herewith prepared by or on behalf of any party will affect the meaning or interpretation of this Agreement or such Exhibit, Annex or Schedule. Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York, New York, U.S.A., unless otherwise specified. Any Contract, instrument or law defined or referred to herein means such Contract, instrument or law as from time to time amended, modified or supplemented (provided that for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to (x) any Contract, instrument or statute shall be deemed to refer to such Contract, instrument or statute, as amended, as of such date, and (y) any rules or regulations promulgated under any such statute, in each case, as of such date). Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms. It is the intention of the parties that, to the extent possible, unless provisions are mutually exclusive and effect cannot be given to both or all such provisions, the representations, warranties, covenants and closing conditions in this Agreement will be construed to be cumulative and that each representation, warranty, covenant and closing condition in this Agreement will be given full, separate and independent effect, and nothing set forth in any provision herein will (except to the extent expressly stated) in any way be deemed to limit the scope, applicability or effect of any other provision hereof. References to "this Agreement" shall include the Company Disclosure Schedules. The Parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement. The phrases "provided to Parent" or "made available to Parent" (and any similar phrases) shall mean the posting by the Company, the Shareholders or their respective Representatives of the various materials, documents and information produced by or on behalf of the Company or the Shareholders throughout Parent's due diligence review process to the Virtual Data Room up until two (2) Business Days prior to the date of this Agreement. When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded and (ii) if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day. The terms "will" and "shall" are to be interpreted to have the same meaning. In this Agreement, for the purpose of Czech Subsidiary, (i) the "officer" means any executive director (in Czech *jednatel*) and (ii) employees means also Czech Contractors where relevant or where not implied otherwise.

Section 11.3. Company Disclosure Schedules. The disclosure of any matter in the Company Disclosure Schedules shall be deemed to be disclosed with respect to any other Section of the Company Disclosure Schedules as and to the extent that the relevance of such matter to such other Section is reasonably apparent on its face. The disclosure of any matter in the Company Disclosure Schedules is not to be treated as constituting or implying any representation, warranty, assurance or undertaking by the Company or any Shareholder not expressly set out in this Agreement, nor to be treated as adding to or extending the scope of any of the Company's representations and warranties in this Agreement. Unless this Agreement specifically provides otherwise, neither the specification of any dollar amount in any representation or warranty contained in this Agreement nor the inclusion of any specific item or matter in any Company Disclosure Schedule is intended to imply that that such amount, or higher or lower amounts, or the item or matter so included or other items or matters, are or are not material, and no Party shall use the fact that such amount, item or matter has been set forth in any Company Disclosure Schedule in any dispute or controversy between the Parties as to whether any amount, item or matter not described herein or included in any Company Disclosure Schedule is or is not material or is or is not in the ordinary course of business, in each case for purposes of this Agreement.

Section 11.4. Counterparts. This Agreement may be executed and delivered (including via facsimile or scanned pdf image or other electronic means) in two or more counterparts, each of which shall be deemed to be an original instrument, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 11.5. Entire Agreement. This Agreement (including the Ancillary Agreements the exhibits and schedules hereto and the other instruments referred to herein) and the Confidentiality Agreement, constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

Section 11.6. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State. Each of the Parties hereto hereby consents to the jurisdiction of the state and federal courts located in the State of Delaware, to the exclusion of any other jurisdiction, for the purposes of all legal Proceedings arising out of or relating to this Agreement or the transactions contemplated hereby (including any Letter of Transmittal or Option Surrender Agreement delivered by a Company Shareholder). Each Party hereto irrevocably waives, to the fullest extent permitted by law, any objection which he or it may now or hereafter have to the laying of venue in any such court or that any such Proceeding which is brought in accordance with this Section has been brought in an inconvenient forum. Process in any such Proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Nothing herein shall affect the right of any Party to serve legal process in any other manner permitted by law or at equity or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER ANCILLARY AGREEMENT ENTERED INTO IN CONNECTION HEREWITH OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY (INCLUDING ANY LETTER OF TRANSMITTAL OR OPTION SURRENDER AGREEMENT DELIVERED BY A COMPANY SHAREHOLDER). EACH PARTY HERETO EXPRESSLY WAIVES AND FOREGOES ANY RIGHT TO RECOVER PUNITIVE, INDIRECT, SPECIAL, EXEMPLARY, LOST PROFITS, CONSEQUENTIAL OR SIMILAR DAMAGES) IN ANY ARBITRATION, LAWSUIT, LITIGATION OR PROCEEDING ARISING OUT OF OR RESULTING FROM ANY CONTROVERSY OR CLAIM RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING ANY LETTER OF TRANSMITTAL OR OPTION SURRENDER AGREEMENT DELIVERED BY A COMPANY SHAREHOLDER). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY CLAIM, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER AGREEMENTS CONTEMPLATED HEREBY, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.6.

Section 11.7. Specific Performance. Each of the Parties acknowledges and agrees that, in the event of any breach of this Agreement, the non-breaching Party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that the Parties (a) shall be entitled to seek, in addition to any other remedy to which they may be entitled at law or in equity, to compel specific performance of this Agreement in accordance with any action instituted in accordance with Section 11.6 and (b) will waive, in any action for specific performance, the defense of the adequacy of a remedy at law. Notwithstanding the foregoing, it is explicitly agreed that the right of a Party to seek specific performance or other equitable remedies shall be subject to the requirements that all of the conditions to Closing set forth in Article XI were satisfied (other than those conditions that by their terms are to be satisfied by actions taken at Closing) at the time when the Closing would have been required to occur but for the breach alleged by the non-breaching Party.

Section 11.8. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Parties, provided, however, that Parent, Merger Sub or the Surviving Corporation may assign its rights hereunder to one or more of its Affiliates without the written consent of any other Party at any time.

Section 11.9. Amendment. This Agreement may not be amended prior to the Effective Time except by an instrument in writing signed on behalf of each of Parent, Merger Sub, and the Company. This Agreement may not be amended after the Effective Time except by an instrument in writing signed on behalf of Parent and the Shareholders' Representative.

Section 11.10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law or regulation, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement and (d) upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.11. Confidentiality.

(a) The terms of the Confidentiality Agreement shall continue in full force and effect up to the Effective Time in accordance with its terms (and any information shared under Section 6.2 shall be subject to the Confidentiality Agreement) and are incorporated by reference herein. Except as required by applicable Law or any listing agreement with any national securities exchange, each party hereto shall maintain the confidentiality of the terms of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall continue in full force and effect.

(b) The Shareholders' Representative acknowledges that the success of the Company and its Subsidiaries after the Effective Time depends upon the continued preservation of the confidentiality of information regarding the business, operations and affairs of the Company and its Subsidiaries (including trade secrets, confidential information and proprietary materials, which may include the following categories of information and materials: methods, procedures, computer programs and architecture, databases, customer information, lists and identities, employee lists and identities, pricing information, research, methodologies, contractual forms, Intellectual Property Rights and other information, whether tangible or intangible, which is not publicly available generally) (collectively, the "***Confidential Information***") accessed or possessed by the Shareholders' Representative and its Affiliates and that the preservation of the confidentiality of such information by the Company and its Subsidiaries (before the Effective Time), the Shareholders, the Shareholders' Representative and their respective Affiliates is an essential premise of the transactions contemplated by this Agreement. The Shareholders' Representative shall hold, and shall cause its Representatives to hold, in confidence and not disclose to any other Person or use (other than for the purposes of performing the obligations of the Shareholders' Representative under this Agreement, or enforcing the rights of the Shareholders' Representative or the Shareholders under this Agreement and the Ancillary Agreements), any Confidential Information. Notwithstanding the foregoing, any such Person may disclose Confidential Information as and to the extent required by applicable Law, so long as the disclosing party (x) provides prior written notice thereof to the party whose information will be disclosed and (y) uses commercially reasonable efforts to seek a protective order causing such information so disclosed to be kept confidential.

Section 11.12. Further Assurances. Each Party shall, without further consideration (unless otherwise provided for herein), take such further action (including the execution and delivery of such further documents and instruments and the making or obtaining of any consents not made or obtained prior to the Closing) as the other Party reasonably requests in order to carry out the purposes of this Agreement and the Ancillary Agreements.

Section 11.13. Press Releases and Announcements. No Party shall issue any press release or announcement relating to the subject matter of this Agreement without the prior written approval of all other Parties; provided, however, that any Party may make any public disclosure that is required by Law or, in the case of Parent, pursuant to the requirements set forth in its or its subsidiaries' debt documents and in accordance with the rules or regulations of the Securities and Exchange Commission, the New York Stock Exchange or the NASDAQ Stock Market (in which case the disclosing Party will advise the other Parties as promptly as practicable prior to making the disclosure and will consider in good faith any suggestions with respect to the content thereof); provided, further, that Parent may issue a press release upon each of the signing of this Agreement and Closing announcing such signing or closing, as applicable, and describing the Merger and the transactions related thereto, in each case upon the prior delivery of a draft of such press release to the Company or, after Closing, the Shareholders' Representative and considering in good faith reasonable comments from the Company or the Shareholders' Representative. In addition, none of the Company, the Shareholders, any Subsidiary of the Company or the Shareholders' Representative shall make any communication to any suppliers, lenders, creditors, distributors, employees, customers, other contracting parties or others having business or financial relationships with the Company or any of its Subsidiaries pertaining to this Agreement and the transactions contemplated herein without the prior written approval of Parent, which approval may not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, nothing in this Section 11.13 shall prevent a Party from having contact or communications with such suppliers, lenders, creditors, distributors, employees, customers or other contracting parties in the ordinary course of business and unrelated to this Agreement or the transactions contemplated hereby.

Section 11.14. No Third-Party Beneficiaries. Except as contemplated by Section 6.7, Section 8.2, Article IX, and for the Shareholders that are intended third-party beneficiaries pursuant to Article II, Article III and this Article XI, nothing in this Agreement will confer any rights, remedies, obligations or liabilities, legal or equitable, including any right of employment, on any Person (including any employee or former employee of the Company or any Subsidiary of the Company) other than the Parties hereto and their respective successors or permitted assigns, or otherwise constitute any Person a third-party beneficiary under or by reason of this Agreement. Nothing in this Agreement, express or implied, is intended to or shall constitute the Parties hereto partners or participants in a joint venture. From and after the Effective Time, all of the Persons identified as third-party beneficiaries pursuant to this Section 11.14 shall be entitled to enforce such provisions and to avail themselves of the benefits of any remedy for any breach of such provisions, all to the same extent as if such Persons were parties to this Agreement.

Section 11.15. Expenses. Except as otherwise expressly provided herein or in any Ancillary Agreement, all (i) Company Transaction Expenses shall be the responsibility of the Shareholders and (ii) fees, costs and expenses incurred by Parent or Merger Sub in connection with the drafting, negotiation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, including the fees and disbursements of legal counsel, financial advisors and accountants, shall be paid by Parent; provided, however, that all Company Transaction Expenses incurred by the Company shall be paid by the Company at or prior to the Closing. Any Company Transaction Expenses incurred by the Company and unpaid at or prior to the Closing, however arising, shall be paid by the Shareholders without contribution by the Company, the Surviving Corporation, Merger Sub or Parent through an adjustment to the Closing Date Purchase Price.

Section 11.16. Receipt of Payments. From and after the Closing, if any Shareholder shall receive any payment in respect of the Business, then such Shareholder shall promptly, and in any event no later than ten (10) calendar days, following the date such Shareholder became aware of its receipt of such payment, notify Parent of such payment and remit such payment to Parent by wire transfer of immediately available funds, to an account designated by Parent, without set-off or deduction of any kind (except as required by applicable Law). Each Shareholder agrees that it shall hold any amounts received by it to which Parent is entitled under this Section 11.16 in trust and agrees that it shall have no right, title or interest whatsoever in such amounts.

Section 11.17. Shareholders' Representative.

(a) By virtue of the adoption and approval of this Agreement and approval of the Merger and/or acceptance of any consideration pursuant to this Agreement or by signing the Shareholder Consent or the Letter of Transmittal and receiving the benefits thereof and without any further action of any of the Shareholders or the Company, the Shareholders have constituted, appointed and empowered and hereby do appoint Fortis Advisors LLC, a Delaware limited liability company, as the Shareholders' Representative, for the benefit of the Shareholders, and as the exclusive agent and attorney-in-fact under this Agreement, the Escrow Agreement and the Paying Agent Agreement to act on behalf of each Shareholder effective as of the Closing, in connection with and to facilitate the consummation of the transactions contemplated hereby, which shall include the power and authority to: (i) execute this Agreement, the Ancillary Agreements and other agreements, documents and certificates pursuant to such agreements, including all amendments to such agreements, and take all actions required or permitted to be taken under such agreements, (ii) authorize delivery to Parent of all or any portion of the Escrow Fund, in satisfaction of purchase price adjustment claims, indemnification claims or other claims contemplated by this Agreement or as provided in the Escrow Agreement or Paying Agent Agreement, (iii) negotiate, execute and deliver such waivers, consents and amendments as the Shareholders' Representative, in its sole discretion, may deem necessary or desirable; (iv) enforce and protect the rights and interests of the Shareholders and to enforce and protect the rights and interests of such Persons arising out of or under or in any manner relating to this Agreement or the Ancillary Agreements and the transactions provided for herein and therein, and to take any and all actions which the Shareholders' Representative believes are necessary or appropriate under this Agreement or the Ancillary Agreements for and on behalf of the Shareholders, including consenting to, compromising or settling any such claims, conducting negotiations with Parent, the Company and their respective Representatives regarding such claims, and, in connection therewith, to: (A) assert any claim or institute any action, proceeding or investigation; (B) investigate, defend, contest or litigate any claim, action, proceeding or investigation initiated by Parent, the Company or any other Person, or by any Governmental Entity against the Shareholders' Representative and/or any of the Shareholders, and receive process on behalf of any or all Shareholders in any such claim, action, proceeding or investigation and compromise or settle on such terms as the Shareholders' Representative shall determine to be appropriate, and give receipts, releases and discharges with respect to, any such claim, action, proceeding or investigation; (C) file any proofs of debt, claims and petitions as the Shareholders' Representative may deem advisable or necessary; (D) settle or compromise any claims asserted under this Agreement or the Ancillary Agreements; (E) file and prosecute appeals from any decision, judgment or award rendered in any such action, proceeding or investigation, it being understood that the Shareholders' Representative shall not have any obligation to take any such actions, and shall not have any Liability for any failure to take any such actions; and (F) use the Expense Fund to satisfy any expenses incurred by the Shareholders' Representative in connection with fulfilling its obligations hereunder from and after the Closing Date (including the fees and expenses of any Independent Auditor pursuant to Article III or Article X and any Transfer Taxes payable by the Shareholders pursuant to Article X); (v) refrain from enforcing any right of the Shareholders arising out of or under or in any manner relating to this Agreement; provided, however, that no such failure to act on the part of the Shareholders' Representative, except as otherwise provided in this Agreement, shall be deemed a waiver of any such right or interest by the Shareholders' Representative or by the Shareholders unless such waiver is in writing signed by the waiving party or by the Shareholders' Representative; (vi) make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Shareholders' Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the transactions contemplated by this Agreement; (vii) engage special counsel, accountants and other advisors and incur such other expenses on behalf of the Shareholders in connection with any matter arising under this Agreement; (viii) collect, hold and disburse the Expense Fund, in accordance with the terms of this Agreement or the Ancillary Agreements; and (ix) take or refrain from taking any or all of the foregoing actions and do or refrain from doing any further act or deed on behalf of the Shareholders relating to the subject matter of this Agreement, the Escrow Agreement and the Paying Agent Agreement which the Shareholders' Representative deems necessary or appropriate in its sole discretion. Notwithstanding the foregoing, the Shareholders' Representative shall have no obligation to act on behalf of the Shareholders, except as expressly provided herein, in the Escrow Agreement, in the Paying Agent Agreement and in the Shareholders' Representative Engagement Agreement, and for purposes of clarity, there are no obligations of the Shareholders' Representative in any ancillary agreement, schedule, exhibit or the Company Disclosure Schedules.

(b) Without limiting the generality of the above, by virtue of the adoption and approval of this Agreement and approval of the Merger or by signing the Shareholder Consent or the Letter of Transmittal and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, each Shareholder grants unto the Shareholders' Representative full power and authority to do and perform each and every act and thing as described above, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that the Shareholders' Representative may lawfully do or cause to be done by virtue hereof. Each Shareholder further acknowledges and agrees that, upon execution of this Agreement, with respect to any delivery by the Shareholders' Representative of any documents executed by the Shareholders' Representative pursuant to this Section 11.17, such Shareholder shall be bound by such documents as fully as if such Shareholder had executed and delivered such documents. No bond shall be required of the Shareholders' Representative. Any and all actions taken by the Shareholders' Representative on behalf of the Shareholders shall be deemed to be facts ascertainable outside this Agreement and shall be binding on all of the Shareholders and each Shareholder's successors as if expressly confirmed and ratified in writing by each such Shareholder. The Shareholders shall cooperate with the Shareholders' Representative and any accountants, attorneys or other agents whom the Shareholders' Representative may retain to assist in carrying out the Shareholders' Representative duties hereunder. The Parties

acknowledge that the Shareholders' Representative obligations under this Section 11.17 are solely as a representative of the Shareholders as set forth in this Agreement.

(c) Certain Shareholders have entered into an engagement agreement (the "***Shareholders' Representative Engagement Agreement***") with the Shareholders' Representative to provide direction to the Shareholders' Representative in connection with its services under this Agreement, the Escrow Agreement, the Paying Agent Agreement and the Shareholders' Representative Engagement Agreement (such Shareholders, including their individual representatives, collectively hereinafter referred to as the "***Advisory Group***"). The Shareholders' Representative shall be entitled to (a) receive reimbursement from the Shareholders for all expenses and charges incurred by the Shareholders' Representative in connection with the performance of their duties and the fulfillment of their obligations under this Agreement, and (b) be indemnified by the Shareholders. Neither the Shareholders' Representative nor its members, managers, directors, officers, contractors, agents and employees nor any member of the Advisory Group (collectively, the "***Shareholders' Representative Group***") shall incur liability or responsibility whatsoever to any Shareholder by reason of any error in judgment or any act or omission performed or omitted hereunder or otherwise in connection with the acceptance or administration of the Shareholders' Representative's responsibilities hereunder, under the Escrow Agreement, under the Paying Agent Agreement or under the Shareholders' Representative Engagement Agreement, excepting and only to the extent any such act or failure to act is finally judicially determined to constitute Fraud, gross negligence, bad faith or willful misconduct. Without limiting the generality of the foregoing, the Shareholders' Representative shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission of the Shareholders' Representative pursuant to such advice shall in no event subject the Shareholders' Representative Group to Liability to any Shareholder. Each Shareholder shall indemnify, defend and hold harmless, severally and not jointly, based on such Shareholder's Pro Rata Portion, the Shareholders' Representative Group from and against all losses, damages, liabilities, claims, obligations, fines, fees, costs and expenses, including reasonable attorneys', accountants' and other experts' and professionals' fees and the amount of any judgment against them, of any nature whatsoever (including any and all expense whatsoever reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened or any claims whatsoever), arising out of or in connection with any claim, investigation, challenge, action or proceeding or in connection with any appeal thereof, relating to the acts or omissions of the Shareholders' Representative hereunder , or otherwise arising out of or in connection with the acceptance or administration of the Shareholders' Representative's duties hereunder, under the Escrow Agreement, under the Paying Agent Agreement or under the Shareholders' Representative Engagement Agreement (collectively, the "***Shareholders' Representative Expenses***"); provided that, in the event that any such indemnified Shareholders' Representative Expense is finally adjudicated to have been primarily caused by Fraud, gross negligence, bad faith or willful misconduct of the Shareholders' Representative, the Shareholders' Representative will reimburse the Shareholders the amount of such indemnified Shareholders' Representative Expense attributable to such Fraud, gross negligence, bad faith or willful misconduct. Shareholders' Representative Expenses may be recovered first, from the Expense Fund, second, from any distribution of the Escrow Amount and any other amounts otherwise distributable to the Shareholders at the time of distribution, and third, directly from the Shareholders. Without limiting the generality of the foregoing, the Shareholders' Representative shall have the right to recover, at its sole discretion, from the Expense Fund, prior to any distribution to the Shareholders, any amounts to which they are entitled pursuant to the expense reimbursement and indemnification provisions of this Section 11.17(c). In the event that any amounts (individually or in the aggregate) to which the Shareholders' Representative is entitled or is obligated to pay pursuant to the foregoing exceed the Expense Fund, upon written notice from the Shareholders' Representative to the Shareholders as to the existence of such a deficiency, each Shareholder shall promptly deliver to the Shareholders' Representative full payment of such Shareholder's Pro Rata Portion of the amount of such deficiency. The Shareholders acknowledge that the Shareholders' Representative shall not be required to expend or risk its own funds or otherwise incur any financial liability in the exercise or performance of any of its powers, rights, duties or privileges or pursuant to this Agreement, the Escrow Agreement, the Paying Agent Agreement, the Shareholders' Representative Engagement Agreement or the transactions contemplated hereby or thereby. Furthermore, the Shareholders' Representative shall not be required to take any action unless the Shareholders' Representative has been provided with funds, security or indemnities which, in its determination, are sufficient to protect the Shareholders' Representative against the costs, expenses and liabilities which may be incurred by the Shareholders' Representative in performing such actions. The Shareholders' Representative shall be entitled to: (i) rely upon the Allocation Schedule, (ii) rely upon any signature believed by it to be genuine, and (iii) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Shareholder or other party.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Shareholders' Representative shall establish such terms and procedures for administering, investing and disbursing any amounts from the Expense Fund, as it may determine in its reasonable judgment to be necessary, advisable or desirable to give effect to the provisions of this Agreement. Without limiting the generality of the foregoing, the following shall apply: (i) the Expense Fund shall be held by the Shareholders' Representative in a segregated client account and shall be used for the purposes of paying directly or reimbursing the Shareholders' Representative for any Shareholders' Representative Expenses incurred pursuant to this Agreement, the Escrow Agreement, the Paying Agent Agreement or any Shareholders' Representative Engagement Agreement, or as otherwise determined by the Advisory Group; (ii) the Shareholders' Representative is not providing any investment supervision, recommendations or advice and shall have no responsibility or liability for any loss of principal of the Expense Fund other than as a result of its Fraud, gross negligence, bad faith or willful misconduct; (iii) as between the Shareholders and the Shareholders' Representative, the Shareholders' Representative is not acting as a withholding agent or in any similar capacity in connection with the Expense Fund and has no tax reporting or income distribution obligations; (iv) the Shareholders will not receive any interest on the Expense Fund and assign to the Shareholders' Representative any such interest; (v) subject to Advisory Group approval, the Shareholders' Representative may contribute funds to the Expense Fund from any consideration otherwise distributable to the Shareholders; and (vi) as soon as reasonably determined by the Shareholders' Representative that the Expense Fund is no longer required to be withheld, the Shareholders' Representative shall distribute the remaining Expense Fund (if any) to the Paying Agent on behalf of the Shareholders (other than the holders of Vested Company Stock Options) or the Surviving Corporation (in the case of holders of Vested Company Stock Options), as applicable, for further distribution to the Shareholders.

(e) The Shareholders' Representative may resign at any time, and may be removed or replaced by the vote of Shareholders with a majority of the Pro Rata Portion of the Purchase Price. All of the indemnities and immunities granted to the Shareholders' Representative Group under this Agreement shall survive the resignation or removal of the Shareholders' Representative or any member of the Advisory Group and the Closing and/or any termination of this Agreement, the Escrow Agreement or the Paying Agent Agreement.

(f) The grant of authority, powers, immunities and rights to indemnification in favor of the Shareholders' Representative Group provided for herein (i) are coupled with an interest and shall be irrevocable and survive the death, incompetency, bankruptcy or liquidation of any Shareholder and shall be binding on any successor thereto, (ii) shall survive the delivery of an assignment by any Shareholder of the whole or any fraction of his, her or its interest in the Escrow Amount and (iii) shall survive the consummation of the transactions contemplated by this Agreement. Any action taken by the Shareholders' Representative pursuant to the authority granted in this Agreement shall be effective and absolutely binding on each Shareholder notwithstanding any contrary action of or direction from such Shareholder and no Shareholder shall have any right to object, dissent, protest or otherwise contest the same, except for actions or omissions of the Shareholders' Representative constituting Fraud, gross negligence, bad faith or willful misconduct.

(g) Parent acknowledges and agrees that the Shareholders' Representative is a party to this Agreement solely to perform certain administrative functions in connection with the consummation of the transactions contemplated hereby. Accordingly, each of Parent and Merger Sub acknowledges and agrees that the Shareholders' Representative shall have no liability to, and shall not be liable for any losses of, any of Parent or Merger Sub in connection with any obligations of the Shareholders' Representative under this Agreement or otherwise in respect of this Agreement or the transactions contemplated hereby, except to the extent such losses shall be finally adjudicated to have been directly and primarily caused by Fraud, gross negligence, bad faith or willful misconduct by the Shareholders' Representative in connection with the performance of its obligations hereunder.

Section 11.18. No Other Representations; Non-Recourse.

(a) Except as expressly set forth in Article IV (as modified by the Company Disclosure Schedules) and the certificate required to be delivered pursuant to Section 7.2(d), neither the Company or its Subsidiaries nor any other Person makes any representation or warranty, express or implied, at law or in equity, by statute or otherwise. Any such other representations or warranties are hereby expressly disclaimed, including, without limitation, any implied representation or warranty as to condition, merchantability, suitability or fitness for a particular purpose. Notwithstanding anything to the contrary, none of the Company or its Subsidiaries nor any other Person makes any representation or warranty to Parent or Merger Sub with respect to any projections, estimates or budgets heretofore delivered to or made available to Parent, Merger Sub or their respective counsel, accountants or advisors of future revenues, expenses or expenditures or future results of operations of the Company. Except as expressly set forth in Article V and the certificate required to be delivered pursuant to Section 7.3(c), none of Parent, Merger Sub nor any other Person makes any representation or warranty, express or implied, at law or in equity, by statute or otherwise. Any such other representations or warranties are hereby expressly disclaimed including, without limitation, any implied representation or warranty as to condition, merchantability, suitability or fitness for a particular purpose. Notwithstanding anything to the contrary, none of Parent, Merger Sub nor any other Person makes any representation or warranty to the Company or the Shareholders with respect to any projections, estimates or budgets heretofore delivered to or made available to the Company, Shareholders or their respective counsel, accountants or advisors of future revenues, expenses or expenditures or future results of operations of Parent or any of its Subsidiaries (including, after the Effective Time, the Surviving Corporation).

(b) Each of Parent and Merger Sub is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition of companies such as the Company as contemplated hereunder. Each of Parent and Merger Sub has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement. Parent and Merger Sub acknowledge and agree that they are relying exclusively on the representations set forth in Article IV (as modified by the Company Disclosure Schedules), the certificate required to be delivered pursuant to Section 7.2(d), the indemnification provisions of Article IX and their own examination and investigation of the Company and its Subsidiaries and that they are not relying on any other statements or documents whenever, wherever and however made.

Section 11.19. Waiver of Conflicts; Privilege.

(a) Each of the parties hereto acknowledges and agrees that Goodwin Procter LLP ("***Goodwin***") has acted as counsel to the Company and its Subsidiaries, the Shareholders' Representative and each of the Shareholders in connection with the negotiation of this Agreement, the Ancillary Agreements and consummation of the transactions contemplated hereby and thereby.

(b) Parent hereby irrevocably waives and agrees not to assert, and agrees to cause the Company and its Subsidiaries to irrevocably waive and not to assert, any conflict of interest arising from or in connection with (i) Goodwin's prior representation of the Company and its Subsidiaries and (ii) Goodwin's representation of the Shareholders' Representative and the Shareholders prior to and after the Closing. For the avoidance of doubt, the conflict waiver effected by this Section 11.19(b) shall apply only to waivable conflicts of interest in accordance with the applicable Rules of Professional Conduct.

(c) Parent further agrees, on behalf of itself and, after the Closing, on behalf of the Company and its Subsidiaries, that all privileged communications in any form or format whatsoever between or among Goodwin, on the one hand, and the Company, the Subsidiaries of the Company, the Shareholders' Representative and/or any Shareholder, or any of their respective directors, officers, employees or other representatives, on the other hand, that relate in any way to the negotiation, documentation and consummation of the transactions contemplated by this Agreement or any dispute arising under this Agreement, unless adjudicated to be not privileged by a court of law (collectively, the "***Privileged Deal Communications***"), shall remain privileged after the Closing and that the Privileged Deal Communications and the expectation of client confidence relating thereto shall belong solely to the Shareholders' Representative and the Shareholders, shall be controlled by the Shareholders' Representative on behalf of the Shareholders and shall not pass to or be claimed by Parent, the Company or any of its Subsidiaries.

(d) Notwithstanding the foregoing, in the event that a dispute arises between Parent, the Company or any of its Subsidiaries, on the one hand, and a third party other than the Shareholders' Representative or a Shareholder, on the other hand, Parent, the Company or the Company's Subsidiaries may assert the attorney-client privilege to prevent the disclosure of the Privileged Deal Communications to such third party; provided, however, that none of Parent, the Company or the Company's Subsidiaries may waive such privilege without the prior written consent of the Shareholders' Representative. In the event that Parent, the Company or the Company's Subsidiaries is legally required by court or governmental Order or otherwise to access, obtain or produce a copy of all or a portion of the Privileged Deal Communications, Parent shall immediately (and, in any event, within five (5) Business Days) notify the Shareholders' Representative in writing (including by making specific reference to this Section 11.19(d)) so that the Shareholders' Representative can seek a protective Order. Parent agrees to use commercially reasonable efforts to assist the Shareholders' Representative in seeking the entry of such protective Order, but the burden (including fees and costs) of seeking entry of such protective Order shall be borne by the Shareholders' Representative (on behalf of the Shareholders). Moreover, nothing herein shall be construed as requiring the Parent, the Company or the Company's Subsidiaries to challenge or appeal any Order requiring access to, or production of, the Privileged Deal Communications, or to subject themselves to any penalties for non-compliance with any legal process or Order. In the event that any Shareholder is legally required by a court or governmental Order or otherwise to access a copy of or disclose all or a portion of the Privileged Deal Communications in such Shareholders' possession, such Shareholder shall notify Parent in writing of such request.

(e) To the extent that files or other materials maintained by Goodwin constitute property of its clients, only the Shareholders' Representative and the Shareholders shall hold such property rights and Goodwin shall have no duty to reveal or disclose any such files or other materials or any Privileged Deal Communications by reason of any attorney-client relationship between Goodwin, on the one hand, and the Company or the Company's Subsidiaries, on the other hand.

(f) Parent further agrees, on behalf of itself and, after the Closing, on behalf of the Company and its Subsidiaries, that all communications in any form or format whatsoever between or among any of Goodwin, the Company, the Company's Subsidiaries, the Shareholders' Representative and/or any Shareholder, or any of their respective directors, officers, employees or other representatives that relate in any way to the negotiation, documentation and consummation of the transactions contemplated by this Agreement or any dispute arising under this Agreement and that are not Privileged Deal Communications (collectively, the "***Non-Privileged Deal Communications***"), shall also belong solely to the Shareholders' Representative and the Shareholders, shall be controlled by the Shareholders' Representative on behalf of the Shareholders and ownership thereof shall not pass to or be claimed by Parent, the Company or the Company's Subsidiaries.

(g) Subject to the provisions of Section 11.19(d) above, Parent agrees that it will not, and that it will cause the Company and the Company's Subsidiaries not to, (i) access or use the Privileged Deal Communications, including by way of review of any electronic data, communications or other information, or by seeking to have the Shareholders' Representative or any Shareholder waive the attorney-client or other privilege, or by otherwise asserting that Parent, the Company or the Company's Subsidiaries has the right to waive the attorney-client or other privilege, (ii) seek to obtain the Privileged Deal Communications from Goodwin or (iii) access or use the Non-Privileged Deal Communications, including by way of review of any electronic data, communications or other information. In furtherance of the foregoing, it shall not be a breach of any provision of this Agreement if prior to the Closing the Company, the Company's Subsidiaries, the Shareholders' Representative and/or any Shareholder, or any of their respective directors, officers, employees or other representatives takes any action to protect from access or remove from the premises of the Company or the Company's Subsidiaries (or any offsite back-up or other facilities) any Privileged Deal Communications or Non-Privileged Deal Communications, including without limitation by segregating, encrypting, copying, deleting, erasing, exporting or otherwise taking possession of any Privileged Deal Communications or Non-Privileged Deal Communications.

(h) Notwithstanding the foregoing, Parent shall not be in breach of this Agreement solely as a result of inadvertent access to any Privileged Deal Communications or Non-Privileged Deal Communications.

(i) The Shareholders acknowledge and agree that, except as otherwise set forth above relating to the Privileged Deal Communications and Non-Privileged Deal Communications, all other confidential and privileged information relating to the Company and any of the Company's Subsidiaries belong to the Company and the Company's Subsidiaries and, following the Closing, Parent shall have full rights with respect thereto.

[END OF TEXT – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have signed in their individual capacities or have caused this Agreement to be signed by their respective authorized signatories thereunto duly authorized as of the date first written above, as applicable.

SHUTTERSTOCK, INC.,
as Parent

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Chief Financial Officer

PIRANHA MERGER SUB, INC.
as Merger Sub

By: /s/ Steve Ciardiello
Name: Steve Ciardiello
Title: President

POND5, INC.,
as the Company

By: /S/ Thomas Crary
Name: Thomas Crary
Title: CEO

FORTIS ADVISORS LLC
as the Shareholders' Representative

By: /S/ Ryan Simkin
Name: Ryan Simkin
Title: Managing Director

Exhibit 10.1

CREDIT AGREEMENT

Dated as of May 6, 2022

among

SHUTTERSTOCK, INC.,
as the Borrower,

and

CERTAIN SUBSIDIARIES OF THE BORROWER FROM TIME TO TIME PARTY HERETO,
as the Guarantors,

and

BANK OF AMERICA, N.A.,
as Administrative Agent, Swingline Lender
and
L/C Issuer,

and

The Other Lenders Party Hereto

BofA SECURITIES, INC.
and
TRUIST SECURITIES, INC.
as
Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This **CREDIT AGREEMENT** ("Agreement") is entered into as of May 6, 2022, among **SHUTTERSTOCK, INC.**, a Delaware corporation (the "Borrower"), the Guarantors (as defined herein), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), **BANK OF AMERICA, N.A.,** as Administrative Agent, Swingline Lender and L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"Act" has the meaning specified in Section 11.18.

"Additional Guaranteed Obligations" means (a) all obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; provided that Additional Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Commitments" means the Commitments of all the Lenders. The Aggregate Commitments on the Closing Date shall be $100,000,000.

"Agreement" means this Credit Agreement.

"Agreement Currency" has the meaning specified in Section 11.23.

"Alternative Currencies" means (a) Canadian Dollars, (b) Euros, (c) British Pound Sterling and (d) such other currency (other than Dollars) that is approved in accordance with Section 1.08.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, by reference to Bloomberg (or such other publicly available service for displaying exchange rates), to be the exchange rate for the purchase of such Alternative Currency with Dollars at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that if no such rate is available, the "Alternative Currency Equivalent" shall be determined by the Administrative Agent or the L/C Issuer, as the case may be, using any reasonable method of determination it deems appropriate in its sole discretion (and such determination shall be conclusive absent manifest error).

"Applicable Law" means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

"Applicable Percentage" means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time, subject to adjustment as provided in Section 2.16. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments and to any Lender's status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01A or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Net Leverage Ratio), it being understood that the Applicable Rate for (a) Loans that are Base Rate Loans shall be the percentage set forth under the column "Base Rate", (b) Loans that are Term SOFR Loans shall be the percentage set forth under the column "Term SOFR & Letter of Credit Fee", (c) the Letter of Credit Fee shall be the percentage set forth under the column "Term SOFR & Letter of Credit Fee", and (d) the Commitment Fee shall be the percentage set forth under the column "Commitment Fee":

Level	Consolidated Net Leverage Ratio	Term SOFR & Letter of Credit Fee	Base Rate	Commitment Fee
1	<1.00:1.00	1.125%	0.125%	0.150%
2	≥1.00:1.00 but <1.50:1.00	1.250%	0.250%	0.175%
3	≥1.50:1.00 but <2.00:1.00	1.375%	0.375%	0.200%
4	≥2.00:1.00	1.500%	0.500%	0.225%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided that if a Compliance Certificate is not delivered when due in accordance with Section 6.02(a), then, upon the request of the Required Lenders, Pricing Level 4 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, (i) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b) and (ii) the initial Applicable Rate shall be set at Pricing Level 1 until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a) for the first fiscal quarter to occur following the Closing Date to the Administrative Agent. Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means BofA Securities, Inc. and Truist Securities, Inc., in their capacity as joint lead arrangers and joint bookrunners.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capital Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2021**,** and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) Term SOFR plus 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a Revolving Borrowing or a Swingline Borrowing, as the context may require.

"British Pound Sterling" means the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Canadian Dollars" means the lawful currency of Canada.

"Capital Lease" means each lease that has been or is required to be, in accordance with GAAP, classified and accounted for as a capital lease or financing lease.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

"Cash Management Agreement" means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Cash Management Bank" means any Person in its capacity as a party to a Cash Management Agreement that, (a) at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party or any Subsidiary, in each case, in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided that for any of the foregoing to be included as a "Guaranteed Cash Management Agreement" on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Guaranteed Obligations Designation Notice to the Administrative Agent prior to such date of determination.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Existing Stockholder becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right); or

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was nominated, appointed or approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

"CME" means CME Group Benchmark Administration Limited.

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

"Collateral Account" has the meaning specified in Section 2.03(o).

"Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01A or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communication" means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate", "SOFR", "Term SOFR" and "Interest Period", timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent in consultation with the Borrower, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent in consultation with the Borrower determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Consolidated EBITDA" means, for any period, the sum of the following determined on a consolidated basis, without duplication, for the Borrower and its Subsidiaries, (a) Consolidated Net Income for the most recently completed Measurement Period plus (b) the following to the extent deducted in calculating such Consolidated Net Income (without duplication): (i) Consolidated Interest Charges for such period, (ii) the provision for federal, state, local and foreign income, profits, capital, franchise and similar Taxes payable for such period, (iii) depreciation and amortization expense for such period and (iv) non-cash charges, losses, writedowns, expenses or other items reducing Consolidated Net Income for such period, including any impairment charges or the impact of purchase accounting (excluding any such non-cash charges, losses, writedowns, expenses or other items to the extent (A) there were cash charges with respect to such charges and losses in past accounting periods or (B) that it represents an accrual or reserve for a cash expenditure for a future period) less (c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such period, non-cash gains (excluding any such non-cash gains to the extent (i) there were cash gains with respect to such gains in past accounting periods or (ii) that it represents an accrual or reserve of a cash expenditure for a future period).

"Consolidated Funded Indebtedness" means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of: (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) the amount drawn and unreimbursed under issued and outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business); (e) all Attributable Indebtedness; (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Subsidiary; and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

"Consolidated Interest Charges" means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capital Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Interest Coverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the most recently completed Measurement Period to (b) Consolidated Interest Charges to the extent paid in cash, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) unusual and infrequent gains and unusual and infrequent losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

"Consolidated Net Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date, less Unrestricted Cash of the Borrower and its Subsidiaries (but in any event, in respect of all such Unrestricted Cash, no more than the greater of (x) $100,000,000 and (y) 50% of Consolidated EBITDA of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period) as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Daily Simple SOFR" with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source).

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by Applicable Law.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of Sanctions (including, as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any property by any Loan Party or Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent or the L/C Issuer, as applicable) by the applicable Bloomberg source (or such other publicly available source for displaying exchange rates) on date that is two (2) Business Days immediately preceding the date of determination (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent or the L/C Issuer, as applicable using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent or the L/C Issuer, as applicable, using any method of determination it deems appropriate in its sole discretion. Any determination by the Administrative Agent or the L/C Issuer pursuant to clauses (b) or (c) above shall be conclusive absent manifest error.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States, any state thereof or the District of Columbia.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, in Section 11.17 hereof.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii), and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"Eligible Currency" means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation by the Administrative Agent and the L/C Issuer of any currency as an Alternative Currency, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, result in, in the reasonable opinion of the Administrative Agent and the L/C Issuer, (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) providing Letters of Credit in such currency has otherwise become impracticable for the L/C Issuer or (d) such currency no longer being a currency in which the L/C Issuer is willing to issue Letters of Credit (each of clauses (a), (b), (c), and (d), a "Disqualifying Event"), then the Administrative Agent shall promptly notify the Borrower and the L/C Issuer, and such country's currency shall no longer be an Alternative Currency until such time as the Disqualifying Event(s) no longer exist.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws (including common law), regulations, standards, ordinances, rules, judgments, interpretations, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of human health and safety (to the extent related to exposure to hazardous substances or wastes), the environment and natural resources or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), whether based in contract, tort, express warranty, strict liability, criminal or civil statute or common law, directly or indirectly relating to (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is, or is reasonably expected to be, considered an at-risk plan (within the meaning of Section 430 of the Code or Section 303 of ERISA) or notification that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA) or in endangered or critical status (within the meaning of Section432 of the Code or Section 305 of ERISA); (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Euro" means the single currency unit of the Participating Member States.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Subsidiary" means, as of any date of determination, any Subsidiary that is at such time any of the following:

(a) a Foreign Subsidiary;

(b) a Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary;

(c) a FSHCO;

(d) a Domestic Subsidiary that is prohibited (but only for so long as such Domestic Subsidiary is so prohibited) from guaranteeing the Obligations by any applicable Law, rule or regulation to Guarantee the Obligations;

(e) a Domestic Subsidiary that is prohibited (but only for so long as such Domestic Subsidiary is so prohibited) by any applicable contractual requirement from guaranteeing the Obligations either existing on the Closing Date or existing at the time such Subsidiary becomes a Subsidiary by acquisition, so long as such prohibition did not arise as part of or in contemplation of such acquisition;

(f) an Immaterial Subsidiary;

(g) a Domestic Subsidiary a guarantee from which may result in material adverse tax consequences to the Borrower or any of its Subsidiaries, as reasonably determined in good faith by the Borrower in consultation with the Administrative Agent; or

(h) a Domestic Subsidiary with respect to which the Administrative Agent and the Borrower reasonably agree that the cost of providing a guarantee of the Obligations would be excessive in relation to the benefit to be afforded thereby by the Guaranteed Parties.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Guarantor failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 11.11 and any other "keepwell", support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to any Recipient, (a) Taxes imposed on or measured by net income or franchise, branch profits or similar Taxes, in each case, however denominated and (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(b) or (d), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired such applicable interest in the applicable Loan or Commitment or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(g), and (d) any Taxes imposed pursuant to FATCA.

"Existing Letters of Credit" means those certain letters of credit set forth on Schedule 2.01D.

"Existing Stockholder" means Jonathan Oringer, his spouse and descendants, and any trust or estate whose legal representatives or beneficiaries (or in the case of a Person with more than one legal representative or beneficiary, at least half of whose legal representatives or beneficiaries) consist of Jonathan Oringer, his spouse or one or more such descendants.

"Facility Termination Date" means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification obligations), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, as of the date of this Agreement (or any amended or successor version described above) and any intergovernmental agreement, treaty or convention (and related laws, legislations, or official administrative pronouncements) implementing the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letter" means the Fee Letter, dated April 8, 2022, among the Borrower, the Administrative Agent and BofA Securities, Inc.

"Foreign Lender" means a Lender that is not a U.S. Person·

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

"FSHCO" means any Subsidiary that owns no material assets other than the Equity Interests or Indebtedness of one or more Foreign Subsidiaries.

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Cash Management Agreement" means any Cash Management Agreement between any Loan Party and any of its Subsidiaries and any Cash Management Bank.

"Guaranteed Hedge Agreement" means any interest rate, currency, foreign exchange, or commodity Swap Contract required by or not prohibited under Article VI or VII between any Loan Party and any of its Subsidiaries and any Hedge Bank.

"Guaranteed Obligations" means all Obligations and all Additional Guaranteed Obligations.

"Guaranteed Obligations Designation Notice" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit H.

"Guaranteed Parties" has the meaning specified in Section 11.19.

"Guarantors" means, collectively, the Subsidiaries listed on Part (c) of Schedule 5.13 and each other Domestic Subsidiary that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

"Guaranty" means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Guaranteed Parties, together with each other guaranty delivered pursuant to Section 6.12.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hedge Bank" means any Person in its capacity as a party to a Swap Contract that, (a) at the time it enters into a Swap Contract not prohibited under Articles VI or VII, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited under Articles VI or VII, in each case, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided that, in the case of a Guaranteed Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Guaranteed Hedge Agreement and provided further that for any of the foregoing to be included as a "Guaranteed Hedge Agreement" on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Guaranteed Obligations Designation Notice to the Administrative Agent prior to such date of determination.

"Immaterial Subsidiary" means any Subsidiary of the Borrower that, as of any date of determination, (a) is not a Guarantor, (b) has been designated in writing by the Borrower to the Administrative Agent as an "Immaterial Subsidiary" and (c) as of the last day of the Measurement Period then most recently ended, does not (i) own assets with an aggregate value in excess of 5% of the value of the consolidated assets of the Borrower and its Subsidiaries and (ii) have revenues exceeding 5% of the consolidated revenues of the Borrower and its Subsidiaries for such Measurement Period; provided that if, as of the last day of any Measurement Period, (x) the aggregate value of the assets owned by all of the Subsidiaries of the Borrower that satisfy the requirements set forth in clauses (a), (b) and (c) above shall have a value in excess of 10% of the value of the consolidated assets of the Borrower and its Subsidiaries as of such date, or (y) the combined revenues of all such Subsidiaries shall exceed 10% of the consolidated revenues of the Borrower and its Subsidiaries for such Measurement Period, then (i) the Borrower shall promptly designate one or more such Subsidiaries as no longer constituting "Immaterial Subsidiaries" or (ii) absent such designation, the fewest number of such Subsidiaries shall collectively and automatically be deemed not to constitute Immaterial Subsidiaries, in each case, to the extent required for the tests in the immediately preceding clauses (x) and (y) to be satisfied. Upon any such Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, Borrower shall cause such Subsidiary to comply with Section 6.12. As of the Closing Date, the Subsidiaries set forth on Part (d) of Schedule 5.13 shall be deemed Immaterial Subsidiaries.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than current trade accounts payable in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Leases and Synthetic Lease Obligations;

(g) all mandatory and non-discretionary obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of the types referred to in the foregoing clauses (a) through (h) of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"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.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided that if any Interest Period for a Term SOFR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swingline Loan), the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, as selected by the Borrower in its Loan Notice (in the case of each requested Interest Period, subject to availability); provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period pertaining to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"ISP" means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

"Judgment Currency" has the meaning specified in Section 11.23.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

"L/C Commitment" means, with respect to the L/C Issuer, the commitment of the L/C Issuer to issue Letters of Credit hereunder. The initial amount of the L/C Issuer's Letter of Credit Commitment is set forth on Schedule 2.01C. The Letter of Credit Commitment of the L/C Issuer may be modified from time to time by agreement between the L/C Issuer and the Borrower, and notified to the Administrative Agent.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Disbursement" means a payment made by the L/C Issuer pursuant to a Letter of Credit.

"L/C Issuer" means Bank of America, in its capacity as issuer of Letters of Credit hereunder. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, including any automatic or scheduled increases provided for by the terms of such Letters of Credit, determined without regard to whether any conditions to drawing could be met at that time, plus (b) the aggregate amount of all Unreimbursed Amounts, including all L/C Borrowings. The L/C Obligations of any Lender at any time shall be its Applicable Percentage of the total L/C Obligations at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.13 or Rule 3.14 of the ISP or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the L/C Issuer and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

"Lender" has the meaning specified in the introductory paragraph hereto and, unless the context requires otherwise, includes the Swingline Lender.

"Lender Party" and "Lender Recipient Party" means collectively, the Lenders, the Swingline Lender and the L/C Issuer.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"Letter of Credit" means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Fee" has the meaning specified in Section 2.03(j).

"Letter of Credit Sublimit" means an amount equal to $25,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Loan or a Swingline Loan.

"Loan Documents" means this Agreement, including schedules and exhibits hereto, each Note, each Issuer Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement, the Guaranty and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"Master Agreement" has the meaning set forth in the definition of "Swap Contract."

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower or the Borrower and its Subsidiaries taken as a whole; or (b) a material adverse effect on (i) the ability of any Loan Party to perform its Obligations under any Loan Document to which it is a party, (ii) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or (iii) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or any Lender under any Loan Documents.

"Material Subsidiary" means any Subsidiary that is not an Immaterial Subsidiary.

"Maturity Date" means May 6, 2027; provided that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Measurement Period" means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower (or, for purposes of determining Pro Forma Compliance, the most recently completed four (4) fiscal quarters of the Borrower), in either case, (i) for which financial statements have been delivered pursuant to Section 6.01 or (ii) for those fiscal quarters completed prior to the Closing Date, for which financial statements have been filed with the SEC and are publicly available to the Lenders.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to (i) 103% in respect of Letters of Credit issued in Dollars or (ii) 105% in respect of Letters of Credit issued in any Alternative Currency, in each case, of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

"Multiemployer Plan" means an employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means an employee benefit plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

"Non-Core Assets" means any assets, divisions or lines of business or other business unit acquired pursuant to a Permitted Acquisition or an Investment permitted by Section 7.02 after the Closing Date, which assets, divisions or lines of business or other business unit, in the reasonable and good faith judgment of the management or board of directors of the Borrower at the time of such Disposition, are not necessary for the conduct of the business of the Borrower and its Subsidiaries taken as a whole.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

"Notice of Loan Prepayment" means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit G or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of the Loan Parties to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Loan Parties; provided that the Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Organization Documents" means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"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, except any such Taxes that are imposed with respect to an assignment, participation or change in Lending Office (other than an assignment, participation or change in Lending Office made pursuant to Section 3.06) as a result of a present or former connection between the assignor, assignee or Lender and the jurisdiction imposing such Taxes (other than connections arising solely as a result of it having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Outstanding Amount" means (i) with respect to Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of the L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

"Participant" has the meaning specified in Section 11.06(d).

"Participant Register" has the meaning specified in Section 11.06(d).

"Participating Member State" means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate could reasonably be expected to have any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means an Acquisition by a Loan Party (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the "Target"), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Borrower and its Subsidiaries pursuant to the terms of this Agreement, in each case so long as:

(a) no Default shall then exist or would exist after giving effect thereto;

(b) the Borrower has demonstrated to the reasonable satisfaction of the Administrative Agent that, after giving effect to the Acquisition on a Pro Forma Basis, the Loan Parties are in Pro Forma Compliance with the covenants set forth in Section 7.11;

(c) the Borrower shall, and shall cause the Target (if a Person) to, comply with the terms of Section 6.12;

(d) the Administrative Agent shall have received prior to the consummation of any such Acquisition for aggregate consideration equal to or in excess of $10,000,000 (i) audited financial statements (or, if unavailable, management-prepared financial statements consisting of a balance sheet, an income statement, a statement of cash flows and a statement of shareholders' equity) of the Target for its two most recent fiscal years and, if available from the Target, for any fiscal quarters ended within the fiscal year to date, and (ii) not less than three (3) Business Days prior to the consummation of any Specified Acquisition, a certificate, executed by a Responsible Officer of the Borrower, certifying that such Specified Acquisition is permitted under Section 7.02; and

(e) such Acquisition shall not be a "hostile" Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target.

"Permitted Refinancing Indebtedness" means, with respect to any Indebtedness, any modification, refinancing, refunding, renewal or extension of such Indebtedness; *provided*, *that*, (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the outstanding principal amount of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon *plus* other reasonable and customary amounts paid, and fees, premiums, penalties and expenses reasonably incurred, in connection with such refinancing, (b) if the Indebtedness being refinanced is subordinated in right of payment to the Obligations, the Indebtedness resulting from such refinancing is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) if the Indebtedness being modified, refinanced, refunded, renewed or extended is secured, no Lien relating thereto shall be expanded to cover any additional property of the Borrower or any Subsidiary, and (d) such Permitted Refinancing Indebtedness is not recourse to any of the Borrower or any Subsidiary that is not an obligor of the Indebtedness being so modified, refinanced, refunded, renewed or extended. For the avoidance of doubt, it is understood that a Permitted Refinancing Indebtedness may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing Indebtedness; *provided*, *that*, such excess amount is otherwise permitted to be incurred under Section 7.03.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan) maintained by the Borrower or, with respect to any such plan subject to Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Pro Forma Basis" and "Pro Forma Effect" means, with respect to any transaction (including any Disposition of all or substantially all of a division or a line of business and any Acquisition, whether actual or proposed), that for purposes of determining compliance with any applicable financing covenant, each such transaction or proposed transaction (including the incurrence of Indebtedness therewith) shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period; and

(e) the above pro forma calculations shall be made in good faith by a financial or accounting officer of the Borrower who is a Responsible Officer and may include, for the avoidance of doubt, the amount of synergies and cost savings projected by the Borrower from actions taken or expected to be taken during the twelve (12)-month period following the date of such transaction, net of the amount of actual benefits theretofore realized during such period from such actions; provided that (i) such amounts are reasonably identifiable, quantifiable and factually supportable in the good faith judgment of the Borrower, (ii) such synergies and cost savings are directly attributable to such transaction, (iii) no amounts shall be added pursuant to this clause (e) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA, whether through a pro forma adjustment or otherwise, with respect to such period and (iv) the aggregate amount of cost savings and synergies added pursuant to this clause (e) for any such period during any such period, shall not exceed 10% of Consolidated EBITDA for such period, calculated without giving effect to any adjustment pursuant to this clause (e).

"Pro Forma Compliance" means, with respect to any transaction, that such transaction does not cause, create or result in a Default under Section 7.11 after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period to (a) such transaction and (b) all other transactions which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning specified in Section 6.02.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 11.21.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document.

"Register" has the meaning specified in Section 11.06(c).

"Regulation U" means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of 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.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans, a Revolving Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

"Required Lenders" means, at any time (a) there are at least two (2) Lenders that are not Affiliates, at least two (2) Lenders that are not Affiliates having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders and (b) there is only one (1) Lender, such Lender. Any Defaulting Lender, as well as the Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or the L/C Issuer, as the case may be, in making such determination; provided further that this definition is subject to Section 3.03 and Section 2.16.

"Rescindable Amount" has the meaning as defined in Section 2.12(b).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Person thereof).

"Revaluation Date" means, with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (iii) such additional dates as the Administrative Agent or the L/C Issuer shall reasonably determine or the Required Lenders shall reasonably require.

"Revolving Borrowing" means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Obligations and Swingline Loans at such time.

"Revolving Loan" has the meaning specified in Section 2.01.

"Revolving Loan Notice" means a notice of (a) a Revolving Borrowing, (b) a conversion of Revolving Loans from one Type to the other, or (c) a continuation of Term SOFR Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"Sanction(s)" means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury ("HMT") or other relevant sanctions authority.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(b)(ii).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

"SOFR Adjustment" with respect to Daily Simple SOFR means 0.15% (15 basis points); and with respect to Term SOFR means 0.10% (10 basis points) for an interest period of one-month's duration, 0.15% (15 basis points) for an interest period of three-month's duration, and 0.25% (25 basis points) for an interest period of six-months' duration.

"Specified Acquisition" means any Permitted Acquisition, the total purchase price (including cash consideration, assumed Indebtedness, earnouts and otherwise) of which is more than $50,000,000.

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Successor Rate" has the meaning specified in Section 3.03(b).

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligations" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swingline Borrowing" means a borrowing of a Swingline Loan pursuant to Section 2.04.

"Swingline Commitment" means as to any Lender (a) the amount set forth opposite such Lender's name on Schedule 2.01B hereof or (b) if such Lender has entered into an Assignment and Assumption or has otherwise assumed a Swingline Commitment after the Closing Date, the amount set forth for such Lender as its Swingline Commitment in the Register maintained by the Administrative Agent pursuant to Section 11.06(c).

"Swingline Lender" means Bank of America, in its capacity as provider of Swingline Loans hereunder, or any successor swing line lender hereunder.

"Swingline Loan" has the meaning specified in Section 2.04(a).

"Swingline Loan Notice" means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"Swingline Sublimit" means an amount equal to the lesser of (a) $25,000,000 and (b) the Aggregate Commitments. The Swingline Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, withholdings (including backup withholding), assessments or other similar fees or charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period**;** and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;

provided that if the Term SOFR determined in accordance with either of the foregoing clauses (a) or (b) of this definition would otherwise be less than zero, the Term SOFR shall be deemed zero for purposes of this Agreement.

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Threshold Amount" means $20,000,000.

"Total Credit Exposure" means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Trailing Four EBITDA" means Consolidated EBITDA for the most recently completed Measurement Period.

"Type" means, with respect to a Revolving Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(f).

"Unrestricted Cash" means, as of any date of determination, cash and cash equivalents of the Borrower that (a) do not appear (and are not required to appear) as "restricted" on the consolidated balance sheet of the Borrower and its Subsidiaries, (b) are not subject to any Lien in favor of any Person (other than bankers' liens) and (c) are otherwise generally available for use by the Borrower and its Subsidiaries, in each case, solely to the extent any such cash and cash equivalents are (or would be) included on the balance sheet of the Borrower as of such date of determination.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(g)(ii)(B)(III).

"Voting Stock" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to so vote has been suspended by the happening of such contingency.

"Wholly-owned Subsidiary" of a Person means any Subsidiary of such Person all of the outstanding Equity Interests (other than directors' qualifying shares and Equity Interests held by other Persons to the extent such Equity Interests are required by applicable law to be held by a Person other than the Borrower or one of its Subsidiaries) of which shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-owned Subsidiaries of such Person, or by such Person and one or more Wholly-owned Subsidiaries of such Person. Unless otherwise specified, all references herein to a "Wholly-owned Subsidiary" or to "Wholly-owned Subsidiaries" shall refer to a Wholly-owned Subsidiary or Wholly-owned Subsidiaries of the Borrower.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Pro Forma Treatment. The parties hereto acknowledge and agree that all calculations of financial ratios and tests or the financial covenants in Section 7.11 (including for purposes of determining the Applicable Rate) for any Measurement Period shall be made on a Pro Forma Basis with respect to (i) any Disposition pursuant to Section 7.05(k) occurring during such Measurement Period, (ii) any Acquisition consummated in such period for consideration in excess of $5,000,000, and (iii) the incurrence of any Indebtedness in such period.

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 Rates; Currency Equivalents.

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Dollar Equivalent amounts of Letters of Credit and Outstanding Amounts denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

1.08 Alternative Letter of Credit Currencies

(a) The Borrower may from time to time request that Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currencies"; provided that such requested currency shall be an Eligible Currency. Any such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., fifteen (15) Business Days prior to the date of the initial desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and the L/C Issuer, in their sole discretion). The Administrative Agent shall promptly notify the L/C Issuer of any such request, and the L/C Issuer shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit in such requested currency.

(c) Any failure by the L/C Issuer to respond to such request within the time period specified in Section 1.08(b) shall be deemed to be a refusal by the L/C Issuer to permit Letters of Credit to be issued in such requested currency. If the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and, as appropriate, the Administrative Agent and the L/C Issuer may amend this Agreement to provide for updated or new reference rates to the extent necessary to add the applicable rate for such currency and/or any applicable adjustment for any existing rate and, to the extent any reference rate definition has been added or otherwise amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.08, the Administrative Agent shall promptly so notify the Borrower.

ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrower, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided that after giving effect to any Revolving Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Revolving Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) two (2) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Term SOFR Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in Sections 2.03(f) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Revolving Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Term SOFR Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate.

(e) After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect with respect to Revolving Loans.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent, and such Lender.

(g) With respect to SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time in consultation with the Borrower and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

2.03 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request the L/C Issuer, in reliance on the agreements of the Lenders set forth in this Section 2.03, to issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars or Alternative Currencies for its own account or the account of any of its Subsidiaries in such form as is acceptable to the Administrative Agent and the L/C Issuer, each in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Commitments.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal. To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer and to the Administrative Agent not later than 1:00 p.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.03(d)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the L/C Issuer, the Borrower also shall submit a letter of credit application and reimbursement agreement on the L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application and reimbursement agreement or other agreement submitted by the Borrower to, or entered into by the Borrower with, the L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts, Issuance and Amendment. A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (i) the aggregate amount of the outstanding Letters of Credit issued by the L/C Issuer shall not exceed its L/C Commitment, (ii) the aggregate L/C Obligations shall not exceed the Letter of Credit Sublimit, (iii) the Revolving Credit Exposure of any Lender shall not exceed its Commitment and (iv) the total Revolving Credit Exposures shall not exceed the total Commitments.

(i) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than $500,000;

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(ii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve months after the then-current expiration date of such Letter of Credit) and (ii) the date that is five Business Days prior to the Maturity Date.

(e) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer hereby grants to each Lender, and each Lender hereby acquires from the L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (e) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

In consideration and in furtherance of the foregoing, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by the L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by the Administrative Agent to the Lenders pursuant to Section 2.03(f) until the L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Maturity Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Lenders have made payments pursuant to this clause (e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this clause (e) to reimburse the L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse the L/C Disbursement.

Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Section 2.14, as a result of an assignment in accordance with Section 11.06 or otherwise pursuant to this Agreement.

If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(e), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (e) shall be conclusive absent manifest error.

(f) Reimbursement. If the L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall reimburse the L/C Issuer in respect of the L/C Disbursement by paying to the Administrative Agent an amount equal to the L/C Disbursement not later than 1:00 p.m. on (i) the Business Day that the Borrower receives notice of the L/C Disbursement, if such notice is received prior to 11:00 a.m. or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time, provided that, if the L/C Disbursement is not less than $1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.02 or Section 2.04 that such payment be financed with a Borrowing of Base Rate Loans or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "Unreimbursed Amount") and such Lender's Applicable Percentage thereof. Promptly upon receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the Unreimbursed Amount, subject to the amount of the unutilized portion of the aggregate Commitments. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in Section 2.03(f) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;

(vii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder; or

(ix) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

None of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the L/C Issuer; provided that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) the L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;

(ii) the L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) the L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by the L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (i) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (ii) the L/C Issuer declining to take-up documents and make payment (A) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor or (B) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (iii) the L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to the L/C Issuer.

(h) Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued by it (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(j) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance, subject to Section 2.16, with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(k) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum equal to the percentage separately agreed upon between the Borrower and the L/C Issuer, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the fifth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(l) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by Applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if the L/C Issuer has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the L/C Issuer and the Lenders with respect to any the L/C Disbursement.

(m) Interim Interest. If the L/C Issuer for any Letter of Credit shall make any L/C Disbursement, then, unless the Borrower shall reimburse the L/C Disbursement in full on the date the L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date the L/C Disbursement is made to but excluding the date that the Borrower reimburses the L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that if the Borrower fails to reimburse the L/C Disbursement when due pursuant to Section 2.03(f), then Section 2.08(b) shall apply. Interest accrued pursuant to this clause (m) shall be for account of the L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to Section 2.03(f) to reimburse the L/C Issuer shall be for account of such Lender to the extent of such payment.

(n) Replacement of the L/C Issuer. The L/C Issuer may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of the L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer pursuant to Section 2.03(j). From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuer, as the context shall require. After the replacement of the L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(o) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with L/C Obligations representing at least $66^{2}/_{3}\%$ of the total L/C Obligations) demanding the deposit of Cash Collateral pursuant to this clause (o), the Borrower shall immediately deposit into an account established and maintained on the books and records of the Administrative Agent (the "Collateral Account") an amount in cash equal to (A) 103% in respect of Letters of Credit issued in Dollars or (B) 105% in respect of Letters of Credit issued in any Alternative Currency, in each case, of the total L/C Obligations as of such date plus any accrued and unpaid interest thereon, provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(f). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, and without limiting the foregoing or Section 2.03(d), if any L/C Obligations remain outstanding after the expiration date specified in Section 2.03(d), the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to (A) 103% in respect of Letters of Credit issued in Dollars or (B) 105% in respect of Letters of Credit issued in any Alternative Currency, in each case, of the L/C Obligations as of such date plus any accrued and unpaid interest thereon.

The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Moneys in the Collateral Account shall be applied by the Administrative Agent to reimburse the L/C Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Obligations at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with L/C Obligations representing $66^2/_3\%$ of the total L/C Obligations), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(p) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, indemnify and compensate the L/C Issuer hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issues solely for the account of the Borrower. The Borrower irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(q) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans in Dollars (each such loan, a "Swingline Loan") to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit; provided that (x) after giving effect to any Swingline Loan, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment, (y) the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (z) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swingline Loan shall be a Base Rate Loan. Immediately upon the making of a Swingline Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swingline Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swingline Lender in immediately available funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Borrower with a copy of the applicable Revolving Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Revolving Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Revolving Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Lenders fund its risk participation in the relevant Swingline Loan and each Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swingline Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

2.05 Prepayments.

(a) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment in accordance with Section 11.02, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) two (2) Business Days prior to any date of prepayment of Term SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of any Term SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Revolving Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrower may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, the Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Revolving Loans and Swingline Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

2.06 Termination or Reduction of Commitments. The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Aggregate Commitments, the Letter of Credit Sublimit or the Swingline Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swingline Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swingline Sublimit. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Revolving Loans outstanding on such date.

(b) The Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Swingline Lender, the Borrower shall repay the outstanding Swingline Loans made by the Swingline Lender in an amount sufficient to eliminate any Fronting Exposure in respect of such Swingline Loans.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Term SOFR for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iii) Upon the written notice of the Administrative Agent (acting upon the written request of the Required Lenders) to the Borrower, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Aggregate Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. (i) The Borrower shall pay to the applicable Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Net Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This clause (b) shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(j) or 2.08(b) or under Article VIII. The Borrower's obligations under this clause (b) shall survive the Facility Termination Date.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Revolving Borrowing of Term SOFR Loans (or, in the case of any Revolving Borrowing of Base Rate Loans, prior to 1:00 p.m. on the date of such Revolving Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Revolving Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Revolving Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Revolving Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Revolving Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Revolving Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due.

With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Revolving Loans made by it, or the participations in L/C Obligations or in Swingline Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Revolving Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Revolving Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section 2.13 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Increase in Commitments.

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the Aggregate Commitments by an aggregate principal amount (for all such requests) not exceeding $100,000,000; provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000, and (ii) the Borrower may make a maximum of five (5) such requests (and no more than two (2) requests per calendar year). At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders) and the proposed effective date of such increase.

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent, the L/C Issuer and the Swingline Lender, the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel and the Borrower and its counsel.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Administrative Agent and the Borrower shall mutually determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties of the Loan Parties contained in Article V and the other Loan Documents are (I) with respect to representations and warranties that contain a materiality qualification, true and correct on and as of the Increase Effective Date and (II) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects on and as of the Increase Effective Date, except that for purposes of this Section, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, (B) no Default exists or would result therefrom, (ii) (x) upon the reasonable written request of any Lender at least five (5) Business Days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and (y) any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. The Borrower shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(f) Conflicting Provisions. This Section 2.14 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

2.15 Cash Collateral.

(a) Obligation to Cash Collateralize. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or the L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.16(a)(iv) below, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.05, 2.16 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided that the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Swingline Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's or such Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 11.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent, the Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the L/C Issuer shall not be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Defined Terms. For purposes of this Section 3.01, the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. 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 an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by the applicable withholding 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 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Loan Parties. The Loan Parties shall 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 3.01) 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 the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting or expanding 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 11.06(d) 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 the 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 the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the 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 the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders and the Administrative Agent; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the 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 the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than any such documentation relating to U.S. federal withholding Tax) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the 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 the Borrower or the Administrative Agent), two (2) duly executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two (2) duly executed copies of 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, IRS Form W-8BEN-E or W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty;

(II) IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" that is related to the Borrower as described in Section 881(c)(3)(C) of the Code and that no payment under any Loan Document is effectively connected with such Lender's conduct of a U.S. trade or business (a "U.S. Tax Compliance Certificate") and (y) IRS Form W-8BEN-E or W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E or W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-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 F-4 on behalf of such direct and indirect partner(s);

(C) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of any other documentation 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 the Borrower or the Administrative Agent to determine the withholding or deduction, if any, required to be made; and

(D) 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 any requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the 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 Section 3.01(g)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any documentation it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(g).

(iv) On or prior to the date on which the Administrative Agent becomes a party to this Agreement (and solely to the extent not otherwise previously delivered under subclause (g)(ii) or (g)(iii) of this Section), if the Administrative Agent is a U.S. Person, it shall deliver to the Borrower two (2) executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding. Otherwise, the Administrative Agent (including any successor Administrative Agent that is not a U.S. Person) shall deliver two (2) duly completed copies of IRS Form W-8ECI (with respect to any payments to be received on its own behalf) and IRS Form W-8IMY (for all other payments) certifying that it is a "U.S. branch" and that the payments it receives for the account of the Lenders are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Loan Parties to be treated as a U.S. Person with respect to such payments (and the Loan Parties and Administrative Agent agree to so treat the Administrative Agent as a U.S. Person with respect to such payments). The Administrative Agent shall update any of the foregoing forms in a reasonably timely manner if any such form expires or if any change in the Administrative Agent's circumstances render any such form invalid; provided that, notwithstanding anything to the contrary in this Section 3.01(g)(iv), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(h) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, shall repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(h), in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this Section 3.01(h) the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the 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 with respect to such Tax had never been paid. This Section 3.01(h) shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(i) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer and the Facility Termination Date.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

3.03 Inability to Determine Rates.

(a) Inability to Determine Rates. If in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in Section 3.03(a)(ii) above, until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Replacement of Term SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) in writing that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent in consultation with the Borrower (any such date, the "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR plus the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate").

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a quarterly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0%, the Successor Rate will be deemed to be 0% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

3.04 Increased Costs;

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer any other condition, cost or expense affecting this Agreement or Term SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive the Facility Termination Date, and resignation of the Administrative Agent.

ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender, the Borrower and each Guarantor;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) an opinion of Cahill, Gordon & Reindel LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(vii) the Audited Financial Statements and the unaudited financial statements of the Borrower referred to in Sections 5.05(a) and 5.05(b).

(b) Upon the reasonable request of any Lender, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) The Administrative Agent, the applicable Arranger and Lenders shall have received all fees, charges, disbursements and expenses to the extent invoiced prior to the Closing Date (including the reasonable fees and expenses of legal counsel to the Administrative Agent and the applicable Arranger) (and paid directly to such counsel if requested by the Administrative Agent), in each case, owing pursuant to the Loan Documents, which invoice may include such additional amounts of fees, charges, disbursements and expenses incurred or reasonably expected to be incurred through the closing proceedings.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Revolving Loan Notice requesting only a conversion of Revolving Loans to the other Type, or a continuation of Term SOFR Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, except, in any case, to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Revolving Loan Notice requesting only a conversion of Revolving Loans to the other Type or a continuation of Term SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to a Loan Party), clause (b)(i) or (c), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Law, except in the case referred to in clause (b)(i) to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and are in full force and effect, (ii) notices required by Law and other actions expressly contemplated under the Loan Documents in connection with enforcement actions and (iii) those the failure to obtain or make which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and the enforcement thereof and subject to general principals of equity.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in stockholders; equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for material Taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries and the related consolidated statement of income or operations, stockholders' equity and cash flows for the fiscal quarter ended March 31, 2022 (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in stockholders' equity for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all material indebtedness and other liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries not included in such financial statements, including liabilities for Taxes, material commitments and Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or by or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, **w**ould reasonably be expected to have a Material Adverse Effect.

5.07 No Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing.

5.08 Ownership of Property; Liens. Each of the Borrower and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Borrower and its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

5.09 Environmental Compliance. There are no claims pending, or to the Borrower's knowledge, threatened, in writing, alleging potential liability of any Environmental Law for which the Borrower reasonably expects to incur liability, in each case which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11 Taxes. The Borrower and each of its Subsidiaries have timely filed all federal, state and other tax returns and reports required to be filed by it, and have timely paid all federal, state and other Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, that have been levied or imposed upon it or its properties, income or assets otherwise due and payable by it, except for Taxes which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or to the extent that the failure to file or pay, as applicable, could not reasonably be expected to result in a Material Adverse Effect.

5.12 ERISA Compliance.

(a) Except as would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service, and (iii) to the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect, (i) no ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA.

(d) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

5.13 Subsidiaries; Equity Interests. The Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens (other than Liens permitted under Section 7.01). The Borrower has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and nonassessable.

5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower nor or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. (a) The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.17 Taxpayer Identification Number. The Borrower's true and correct U.S. taxpayer identification number is set forth on Schedule 11.02.

5.18 Intellectual Property; Licenses, Etc. The Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses and other intellectual property rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrower, no product, service, process, method, substance, part or other material now used by the Borrower or any Subsidiary infringes, misappropriates or otherwise violates upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrower, there has been no unauthorized use, access, interruption, modification, corruption or malfunction of any information technology assets or systems (or any information or transactions stored or contained therein or transmitted thereby) owned or used by the Borrower or any of its Subsidiaries, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.19 Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance, in all material respects, with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

5.20 Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.21 EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

5.22 Covered Entities. No Loan Party is a Covered Entity.

ARTICLE VI. AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

6.01 Financial Statements. Deliver to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower or, if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC) (commencing with the fiscal year ended December 31, 2022), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in stockholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if earlier, five (5) days after the date required to be filed with the SEC) (without giving effect to any extension permitted by the SEC) (commencing with the fiscal quarter ended June 30, 2022) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated statements of changes in stockholders' equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under clauses (a) or (b) above, but Section 6.02(c) shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

6.02 Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended June 30, 2022), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(e) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act;

(g) to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification; and

(h) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

6.03 **Notices**. Promptly notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of all litigation affecting the Borrower or any Subsidiary as a defendant and where the amount claimed in a single litigation action, not fully covered by insurance, is in excess of the Threshold Amount;

(c) of the occurrence of any ERISA Event that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary, including any determination by the Borrower referred to in Section 2.10(b); and

(e) of any other matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its material obligations and liabilities, including (a) all Taxes levied upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or the failure to make payment could not reasonably be expected to result in a Material Adverse Effect; (b) all lawful claims which, if unpaid, would by law become a Lien (other than Liens permitted under Section 7.01) upon its property; and (c) all Indebtedness with an outstanding principal amount in excess of the Threshold Amount, as and when due and payable, but subject to applicable grace and notice periods and any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 unless (other than with respect to preservation of existence of the Borrower) the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except to the extent failure to do so would reasonably be expected to have a Material Adverse Effect; and (b) with respect to its material properties and equipment necessary in the operation of its business, make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that (x) so long as no Event of Default has occurred and is continuing, only one (1) visit per calendar year shall be at the expense of the Borrower, (y) when an Event of Default exists and is continuing the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice and (z) in respect of any such discussions with any independent accountants, the Borrower or such Subsidiary, as the case may be, must receive reasonable advance notice thereof and a reasonable opportunity to participate therein and such discussions will be subject to the execution of any non-reliance letter or other customary requirements of such accountants.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions for working capital and general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Additional Guarantors. The Loan Parties will cause each of their Domestic Subsidiaries (which, for the purposes of this Section 6.12, shall include any Domestic Subsidiary that ceases to be an Excluded Subsidiary) to promptly (and in any event within sixty (60) days after such Domestic Subsidiary is formed or acquired (or such longer period as agreed by the Administrative Agent in its reasonable discretion)), (a) become a Guarantor by executing and delivering to the Administrative Agent a joinder to the Guaranty, in substantially the form of Exhibit I, and (b) deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person and such other documents or agreements as the Administrative Agent may reasonably request; provided that no Excluded Subsidiary shall be required to become a Guarantor; provided further that at any time any Excluded Subsidiary ceases to be an Excluded Subsidiary (including as a result of the Subsidiaries of the Borrower designated as Immaterial Subsidiaries exceeding the aggregate threshold set forth in the definition thereof), such Excluded Subsidiary shall be required to become a Guarantor within sixty (60) days of such Subsidiary ceasing to be an Excluded Subsidiary (or such longer period as agreed by the Administrative Agent in its reasonable discretion).

6.13 Anti-Corruption Laws; Sanctions. Conduct its businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

ARTICLE VII. NEGATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto) and (ii) such Lien shall secure only those obligations which it secures on the Closing Date and Permitted Refinancing Indebtedness with respect to such obligations;

(c) Liens (other than Liens imposed under ERISA) for Taxes not yet delinquent more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.03(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto), (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition and (iii) the aggregate outstanding principal amount of the Indebtedness secured thereby shall not, in the aggregate, at any time exceed the greater of (x) $10,000,000 and (y) 5% of Trailing Four EBITDA at the time of incurrence thereof;

(j) other Liens on property of the Borrower or any of its Subsidiaries; provided that (i) the aggregate outstanding principal amount of the Indebtedness secured thereby shall not, in the aggregate, at any time exceed the greater of (x) $20,000,000 and (y) 10% of Trailing Four EBITDA at the time of incurrence thereof and (ii) at the time of and immediately after giving effect to the incurrence of such Liens on a Pro Forma Basis, no Default shall exist or would result therefrom;

(k) bankers' or similar Liens, rights of setoff or rights of pledge and other similar Liens resulting from (i) the establishment of depositary or investment relations in one or more security accounts, investment accounts or deposit accounts maintained by the Borrower or any of its Subsidiaries with banks or other financial institutions not granted in connection with the issuance of Indebtedness and (ii) pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Subsidiaries;

(l) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease permitted under this Agreement entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business and covering only the assets so leased, licensed or subleased;

(m) Liens of a collection bank arising under Section 4-208 or Section 4-210 of the UCC on items in the course of collection;

(n) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that is merged or consolidated with or into the Borrower or any of its Subsidiaries or becomes a Subsidiary after the Closing Date prior to the time such Person is so merged or consolidated or becomes a Subsidiary; provided that (i) such Liens were in existence at the time of, and were not created in contemplation of, such merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto) and (iii) such Liens shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(o) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(p) any obligations or duties affecting any of the property of the Borrower or any Subsidiary to any municipality or public authority with respect to any franchise, grant, license or permit which do not materially impair the use of such property for the purposes for which it is held;

(q) purported Liens evidenced by precautionary UCC financing statements relating to operating leases permitted by this Agreement;

(r) Liens on insurance policies and proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business or otherwise consistent with past practice, provided that such Liens do not extend to any property or assets other than the corresponding insurance policies being financed;

(s) Liens in favor of a seller solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Permitted Acquisition or other Investment permitted hereunder;

(t) leases, subleases or licenses, including non-exclusive outbound licenses or sub-licenses of intellectual property rights, granted to other Persons in the ordinary course of business consistent with past practice and any interest or title in connection therewith as well as associated negative pledges in each case not interfering in any material respect with the ordinary conduct of the business or operations of the Loan Parties; and

(u) landlord's Liens arising at Law; provided that such Liens secure only amounts not overdue for a period of more than thirty (30) days or, if due and payable, are (i) unfiled and no other action has been taken to enforce the same, or (ii) are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established.

7.02 Investments. Make any Investments, except:

(a) Investments held by the Borrower or such Subsidiary in the form of cash equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed $1,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested not to exceed, at any time, the greater of (x) $20,000,000 and (y) 10% of Trailing Four EBITDA;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.03;

(f) Permitted Acquisitions; provided that, for the avoidance of doubt, Permitted Acquisitions by any Loan Party of any Subsidiary that is not (or will not become) a Loan Party shall be subject to the limitation set forth in Section 7.02(c)(iv);

(g) other Investments by the Borrower and its Subsidiaries not to exceed, in aggregate at any time, the greater of (x) $30,000,000 and (y) 15% of Trailing Four EBITDA; provided that at that time of and immediately after giving effect to the making of such Investments on a Pro Forma Basis, no Default shall exist or would result therefrom;

(h) other Investments by the Borrower and its Subsidiaries not otherwise permitted by this Section 7.02 only so long as at the time of and immediately after giving effect to the making of any such Investment on a Pro Forma Basis, (i) no Default shall exist or would result therefrom and (ii) the Consolidated Net Leverage Ratio, determined on a Pro Forma Basis, does not exceed 2.00:1.00;

(i) Investments to the extent that payment for such Investments is made with common Equity Interests of the Borrower or with net proceeds of any substantially contemporaneous issuance of common Equity Interests of the Borrower;

(j) Investments represented by Swap Contracts permitted under Section 7.03(d);

(k) Investments held by any Subsidiary at the time it becomes a Subsidiary after the Closing Date in a transaction permitted by this Section 7.03 to the extent that such Investments were not made in contemplation of or in connection with such transaction and were in existence on the date of such transaction;

(l) promissory notes and other non-cash consideration received by the Borrower or any Subsidiary in connection with any Disposition permitted hereunder;

(m) Guarantees by the Borrower or any Subsidiary of obligations of any Subsidiary or the Borrower incurred in the ordinary course of business and not constituting Indebtedness;

(n) deposits, prepayments and other credits to suppliers made in the ordinary course of business; and

(o) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof.

7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any Permitted Refinancing Indebtedness in respect thereof;

(c) (i) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Guarantor, and (ii) Guarantees of any Subsidiary that is not a Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Subsidiary, so long as, in the case of any such Subsidiary that provides a Guarantee in respect of Indebtedness of the Borrower or any other Loan Party, such Subsidiary provides a Guarantee in respect of the Guaranteed Obligations, which Guarantee shall rank at least *pari passu* in priority of payment in respect of such other Guarantee and is otherwise on substantially similar or better terms (in respect of the Guaranteed Parties) as the documentation evidencing such other Guarantee;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided that the aggregate outstanding principal amount of all such Indebtedness under this Section 7.03(e) shall not, in the aggregate, at any one time outstanding exceed the greater of (x) $10,000,000 and (y) 5% of Trailing Four EBITDA, and Permitted Refinancing Indebtedness in respect thereof;

(f) other Indebtedness of the Borrower and its Subsidiaries not to exceed at any time outstanding, an aggregate outstanding principal amount of the greater of (x) $20,000,000 and (y) 10% of Trailing Four EBITDA; provided that at the time of and immediately after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, (i) no Default shall exist or would result therefrom and (ii) the Borrower and its Subsidiaries shall be in pro forma compliance with the financial covenants set forth in Section 7.11;

(g) (x) other unsecured Indebtedness of the Borrower and its Subsidiaries not otherwise permitted by this Section 7.03 only so long as at the time of and immediately after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, (i) no Default shall exist or would result therefrom and (ii) the Consolidated Net Leverage Ratio, determined on a Pro Forma Basis, does not exceed 2.00:1.00 and (y) any Permitted Refinancing Indebtedness in respect thereof;

(h) unsecured Indebtedness of a Subsidiary owed to the Borrower or a Subsidiary, which Indebtedness shall (i) be on terms (including subordination terms) reasonably acceptable to the Administrative Agent and (ii) be otherwise permitted under Section 7.02;

(i) to the extent constituting Indebtedness, obligations in respect of Cash Management Agreements;

(j) unsecured Indebtedness of the Borrower or any Subsidiary in respect of letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments incurred in respect of workers compensation claims, unemployment insurance, other types of social security, pension plan obligations, vacation pay, health, disability or other employee benefits;

(k) obligations in respect of performance, bid, customs, government, appeal and surety bonds, performance and completion guaranties and similar obligations provided by the Borrower or any of its Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business;

(l) (i) Indebtedness of any Person that becomes a Subsidiary after the Closing Date; *provided*, *that*, (A) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (B) the aggregate principal amount of Indebtedness outstanding in reliance on this clause (l) shall not exceed, at the time of incurrence thereof, $10,000,000 and (ii) Permitted Refinancing Indebtedness in respect of the Indebtedness described in the foregoing subclause (l)(i);

(m) Indebtedness of the Borrower or any of its Subsidiaries in the form of earn-outs, indemnification, incentive, non-compete, consulting or other similar arrangements and other contingent obligations in respect of any Permitted Acquisitions or any other Investments permitted by Section 7.02; and

(n) Indebtedness owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Guarantor is merging with another Subsidiary, the Guarantor shall be the continuing or surviving Person;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Guarantor, then the transferee must either be the Borrower or a Guarantor;

(c) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided, that, (i) such dissolution or liquidation does not result in the Disposition of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, and (ii) such dissolution or liquidation would not reasonably be expected to have a Material Adverse Effect;

(d) in connection with any Acquisition otherwise permitted hereunder, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a Wholly-owned Subsidiary of the Borrower and (ii) in the case of any such merger to which any Guarantor is a party, such Guarantor shall be the surviving Person;

(e) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party; provided that the continuing or surviving Person shall be a Subsidiary, which shall comply with the applicable requirements of Section 6.12, to the extent required thereby or (ii) to a Loan Party;

(f) any Subsidiary may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; provided that the continuing or surviving Person shall be a Subsidiary, which shall comply with the applicable requirements of Section 6.12, to the extent required thereby; provided further that if such Subsidiary was a Loan Party the continuing or surviving Person shall be a Loan Party;

(g) none of the foregoing shall prohibit any Disposition permitted by Section 7.05; and

(h) any Subsidiary may effect a merger, dissolution, liquidation, consolidation or amalgamation to effect a Disposition permitted pursuant to Section 7.05.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) (i) Dispositions of used, surplus, obsolete or worn out property, whether now owned or hereafter acquired, that is no longer used or useful in the conduct of the businesses of the Borrower and its Subsidiaries in the ordinary course of business, (ii) leases and subleases of real property in the ordinary course of business, (iii) leases, subleases, sales, assignments, licenses and sublicenses of personal property in the ordinary course of business (including non-exclusive licenses of intellectual property), which, in the reasonable good faith determination of the Borrower, do not interfere in any material respect with the business of the Borrower, and (iv) in the ordinary course of business, the lapse, abandonment or other Disposition of intellectual property that is, in the reasonable business judgment of the Borrower, (A) no longer used or useful in the conduct of its business or otherwise uneconomical to prosecute or maintain and (B) not materially disadvantageous to the business of the Borrower;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to the Borrower or to a Wholly-owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;

(e) Dispositions permitted by Section 7.04, Investments permitted by Section 7.02, Restricted Payments permitted by Section 7.06 and Liens permitted by Section 7.01, in each case, other than by reference to this Section 7.05;

(f) Dispositions by the Borrower and its Subsidiaries of cash or cash equivalents, in each case, in a manner not prohibited by the other terms of this Agreement and otherwise in the ordinary course of business;

(g) Dispositions of accounts receivable (or notes accepted to evidence same) in connection with the compromise, settlement or collection thereof in the ordinary course of business;

(h) the lease, assignment, license or sub-license or sub-lease of any real or personal property in the ordinary course of business to the extent the same does not materially interfere with the business of the Borrower or any Subsidiary;

(i) Dispositions of Non-Core Assets acquired in connection with a Permitted Acquisition or Investment permitted by Section 7.02 after the Closing Date;

(j) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(k) other Dispositions by the Borrower and its Subsidiaries not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition and (ii) the fair market value of the property Disposed of in reliance on this clause (k) shall not exceed the greater of (x) $10,000,000 and (y) 5% of Trailing Four EBITDA in the aggregate for all Dispositions consummated in reliance on this clause (k) during any calendar year;

(l) the unwinding of Swap Contracts permitted hereunder;

(m) the compromise, settlement, release or surrender of a contract, tort or other litigation, claim, arbitration or other dispute in the ordinary course of business; and

(n) Dispositions in connection with financing transactions permitted by or executed in connection with a transaction effecting a financing permitted under Section 7.03(f).

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that:

(a) each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests;

(d) the Borrower may make Restricted Payments with the proceeds of, or in exchange for, a substantially contemporaneous issuance of Equity Interests of the Borrower;

(e) the Borrower may make other Restricted Payments in an aggregate amount not to exceed during any fiscal year of the Borrower the greater of (x) $15,000,000 and (y) 7.50% of Trailing Four EBITDA; provided that at the time of and immediately after giving effect to the making of any such Restricted Payment on a Pro Forma Basis, no Default shall exist or would result therefrom;

(f) the Borrower may make other Restricted Payments not otherwise permitted by this Section 7.06 only so long as at the time of and immediately after giving effect to the making of such Restricted Payment on a Pro Forma Basis, (i) no Default shall exist or would result therefrom and (ii) the Consolidated Net Leverage Ratio, determined on a Pro Forma Basis, does not exceed 3.25:1.00;

(g) the Borrower may make Restricted Payments, not exceeding $5,000,000 in the aggregate for any fiscal year, pursuant to and in accordance with stock option plans or other benefit plans or agreements for directors, officers or employees of the Borrower and its Subsidiaries; and

(h) the Borrower and each Subsidiary may pay withholding or similar taxes payable by any future, present or former employee, director or officer (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) in connection with any repurchases of Equity Interests or the exercise of stock options if such Equity Interests represent a portion of the exercise price of such options or warrants or required withholding or similar taxes.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) intercompany transactions expressly permitted by this Agreement, (b)(i) transactions between Loan Parties and (ii) transactions between Subsidiaries that are not Loan Parties, (c) in the ordinary course of business, normal and reasonable (i) compensation and reimbursement of expenses of directors, officers and employees and termination and other employee benefit arrangements paid to directors, officers or employees and (ii) indemnity provided to and reasonable and customary fees and expense reimbursements paid to members of the board of directors (or similar governing body) of the Borrower or any Subsidiary, (d) issuances of Equity Interests of the Borrower not prohibited by this Agreement, (e) transactions involving aggregate payments of less than an aggregate amount equal to $2,500,000, (f) any Restricted Payment permitted by Section 7.06, any Investment permitted by Section 7.02, any Indebtedness permitted by Section 7.03, any fundamental changes permitted under Section 7.04 and any Dispositions permitted under Section 7.05, (g) any agreement or arrangement in effect on the Closing Date and, except with respect to such agreements or arrangements valued in the aggregate at less than $5,000,000, set forth on Schedule 7.08 hereto, or any amendment to such agreement or arrangement (so long as such amendment is not materially more adverse to the interests of the Lenders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date), and (h) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms'-length transaction with a Person other than an officer, director or Affiliate (for transactions with a value in excess of $20,000,000, as determined in good faith by the board of directors of the Borrower).

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower (unless such Subsidiary would be an Excluded Subsidiary independent of such Contractual Obligation) or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, that the foregoing shall not apply to:

(a) any document or instrument governing Indebtedness incurred pursuant to Section 7.03(b), (e) and (l); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith;

(b) restrictions and conditions imposed by Law or by any Loan Document;

(c) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Subsidiary (and not prohibited hereunder) solely to the extent in effect pending the consummation of such transaction;

(d) customary provisions in leases and licenses and other contracts not prohibited hereunder restricting the assignment or encumbrance thereof;

(e) (i) customary restrictions and conditions contained in any agreement, document or instrument governing Indebtedness issued or incurred in compliance with this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, or (ii) restrictions and conditions in any agreement, document, instrument or other arrangement relating to the assets or business of any Subsidiary existing prior to the consummation of a Permitted Acquisition in which such Subsidiary was acquired (and not created in contemplation of such Acquisition) and the restriction or condition set forth in such agreement does not apply to the Borrower or any other Subsidiary;

(f) customary provisions in joint venture agreements (including, without limitation, partnership agreements, limited liability company organizational governance documents and other similar agreements) (provided that such provisions apply only to such joint venture and to Equity Interests in such joint venture);

(g) any agreement in effect at the time any Person becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as only applicable to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein; and

(h) any encumbrances or restrictions applicable solely to a Foreign Subsidiary and contained in any credit facility extended to any Foreign Subsidiary which is not prohibited hereunder.

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any Measurement Period of the Borrower (commencing with the fiscal quarter ending June 30, 2022) to be less than 3.00:1.00.

(b) Consolidated Net Leverage Ratio. Permit the Consolidated Net Leverage Ratio as of the end of any Measurement Period of the Borrower (commencing with the fiscal quarter ending June 30, 2022) to be greater than 3.50:1.00; provided that after the consummation of a Specified Acquisition, the Borrower may elect (in a writing to the Administrative Agent) to increase the maximum Consolidated Net Leverage Ratio to 4.00:1.00 for the first three full fiscal quarters occurring after the date of such Specified Acquisition.

7.12 Sanctions. Directly or indirectly, knowingly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of such funding, is the subject of Sanctions, except to the extent permissible for a Person required to comply with Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

7.13 Anti-Corruption Laws. Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other anti-corruption legislation in other jurisdictions.

ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an event of default (each, an "Event of Default"):

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05(a) (solely with respect to the Borrower), 6.11 or Article VII on its part to be performed or observed; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (x) written notice thereof from the Administrative Agent and (ii) any Loan Party becoming aware thereof; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall (x) with respect to representations and warranties that contain a materiality qualification, be incorrect or misleading in any respect when made or deemed made and (y) with respect to representations and warranties that do not contain a materiality qualification, be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Material Subsidiary (A) fails to make any payment (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) when due (beyond any applicable grace period) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such "Swap Contract") resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Material Subsidiary is the Defaulting Party (as defined in such "Swap Contract") or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Material Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Material Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 45 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Material Subsidiary thereof one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage) and, in each case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which such judgment shall remain undischarged and not be effectively stayed or bonded; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower or any of its Subsidiaries to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of the Loan Documents; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided that upon the occurrence of an event described in Section 8.01(f) with respect to the Borrower, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Guaranteed Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Guaranteed Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans and L/C Borrowings and Guaranteed Obligations then owing under the Guaranteed Hedge Agreements and Guaranteed Cash Management Agreements, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Guaranteed Obligations otherwise set forth above in this Section 8.03.

Notwithstanding the foregoing, Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Guaranteed Obligations Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX. ADMINISTRATIVE AGENT

9.01 Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder 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 the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or the L/C Issuer, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative 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 (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may 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. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the 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.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the revolving credit facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article IX and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swingline Lender. If Bank of America resigns as the L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (b) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on the Administrative Agent, the Arranger and the Other Lenders. Each Lender and the L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or the L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the bookrunners or arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, 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 Loans, L/C Obligations and all other Guaranteed Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) 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, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 Guaranty Matters. Without limiting the provisions of Section 9.09, the Lenders (including in their respective capacities as current or potential Cash Management Banks and/or Hedge Banks) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. The Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03 or any Guaranty by virtue of the provisions hereof shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of any Guaranty) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Guaranteed Obligations Designation Notice of such Guaranteed Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements in the case of a Facility Termination Date.

9.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.13 **Recovery of Erroneous Payments**. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE X. CONTINUING GUARANTY

10.01 Guaranty. Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Guaranteed Obligations; provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Guaranteed Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02 Rights of Lenders. Each Guarantor consents and agrees that the Guaranteed Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

10.03 Certain Waivers. Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Guaranteed Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in the power of any Guaranteed Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Guaranteed Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by Applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.

10.04 Obligations Independent. The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

10.05 Subrogation. No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until the Facility Termination Date. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Guaranteed Parties and shall forthwith be paid to the Guaranteed Parties to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Guaranteed Parties exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Guaranteed Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Guaranteed Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this Section 10.06 shall survive termination of this Guaranty.

10.07 Stay of Acceleration. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Guaranteed Parties.

10.08 Condition of Borrower. Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Guaranteed Parties has any duty, and such Guarantor is not relying on the Guaranteed Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Guaranteed Parties to disclose such information and any defense relating to the failure to provide the same).

10.09 Appointment of Borrower. Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

10.10 Right of Contribution. The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Law.

10.11 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any -Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.11 shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 10.11 to constitute, and this Section 10.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE XI. MISCELLANEOUS

11.01 Amendments, Etc. Subject to Section 3.03 and the last paragraph of this Section 11.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) (i) change Section 8.03 or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments, pro rata payments or pro rata sharing of payments required hereunder, (ii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation, or (iii) release, or have the effect of releasing, all or substantially all of the value of the Guarantees of the Obligations, in any case, without the written consent of each Lender directly affected thereby;

(f) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(g) release all or substantially all of the value of the Guaranty without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and, provided that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any waiver, amendment, consent or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all 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 or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in sub clause (b) below, shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, facsimile, telephone number or email address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Revolving Loan Notices, Letter of Credit Applications and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and out-of-pocket disbursements of one firm of primary counsel for the Administrative Agent and its Affiliates and, if reasonably necessary, one special and one local counsel in each relevant jurisdiction) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of one firm of primary counsel for the Administrative Agent, the Lenders and the L/C Issuer, taken as a whole, and, if reasonably necessary, one special and one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional firm of primary counsel, one additional special and one additional counsel in each applicable jurisdiction to the affected parties, taken as a whole), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and out-of-pocket disbursements of one firm of outside counsel for all Indemnitees, taken as a whole and, if reasonably necessary, one special and one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional firm of primary counsel, one additional special and local counsel in each applicable jurisdiction to the affected parties, taken as a whole), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, (including, without limitation, the Indemnitee's reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record, the performance by the parties hereto of their respective obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such Indemnitee, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for a material breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Arranger or the Administrative Agent in their capacities as such). Without limiting or

expanding the provisions of Section 3.01, this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clauses (a) or (b) of this Section 11.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), 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 the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no party (and no Indemnitee) hereto shall assert, and each party hereto (and each Indemnitee) hereby waives, and acknowledges that no other Person shall have, any claim against any other party hereto 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, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof, provided that nothing contained in this clause (d) will limit the Borrower's indemnification obligations set forth herein to the extent such special, indirect, consequential or punitive damages are included in any third party claim with respect to which the applicable Indemnitee is entitled to indemnification under clause b above. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swingline Lender, the replacement of any Lender, and the Facility Termination Date.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section 11.06 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 11.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section 11.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section 11.06 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after receiving written notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer and the Swingline Lender (in each case, such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this clause (vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the 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 Sections 3.01, 3.04, 3.05, and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the 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 any notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such sections and Section 3.06) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b) (it being understood that the documentation required under Section 3.01(g) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b); provided that such Participant (A) shall be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under Section 11.06(b) and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent the Borrower otherwise consents (which consent shall be limited or qualified in a manner consistent with the Borrower's consent rights to any assignment as detailed in subclause (b)(iii)(A) of this Section). Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant shall be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. 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, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to clause (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Administrative Agent, the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swingline Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (y) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 11.07, (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (z) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this Section 11.07. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section 11.07, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including United States Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Integration; Effectiveness. This Agreement, the other Loan Documents, and the Fee Letter with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 11.13 to the contrary, (i) the Lender that acts as the L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to the L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to the L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION 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 IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 11.14(b). EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent**,** the Arranger and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent**,** the Arranger and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and the other Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent**,** the Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent**,** the Arranger nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent**,** the Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Electronic Execution; Electronic Records; Counterparts. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent and the Lender Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lender Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, L/C Issuer nor Swingline Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, L/C Issuer and/or Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lender Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender Party without further verification and (b) upon the request of the Administrative Agent or any Lender Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Neither the Administrative Agent, L/C Issuer nor Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's, L/C Issuer's or Swingline Lender's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, L/C Issuer and Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Lender Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document, and (ii) waives any claim against the Administrative Agent, each Lender Party and each Related Party for any liabilities arising solely from the Administrative Agent's and/or any Lender Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

11.19 Subordination. Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Administrative Agent, a Lender, the L/C Issuer, a Hedge Bank, a Cash Management Bank, and/or an Indemnitee (collectively, the "Guaranteed Parties") or resulting from such Subordinating Loan Party's performance under this Guaranty, to the indefeasible payment in full in cash of all Guaranteed Obligations. If the Guaranteed Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Guaranteed Parties and the proceeds thereof shall be paid over to the Guaranteed Parties on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Event of Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to intercompany debt; provided that in the event that any Loan Party receives any payment of any intercompany debt at a time when such payment is prohibited by this Section 11.19, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

11.20 Entire Agreement. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or the L/C Issuer that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or the L/C Issuer that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.22 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.23 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Administrative Agent, the L/C Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, the L/C Issuer or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent, the L/C Issuer or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent, the L/C Issuer or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, the L/C Issuer or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent, the L/C Issuer or any Lender in such currency, the Administrative Agent, the L/C Issuer or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under Applicable Law).

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

SHUTTERSTOCK, INC.

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Chief Financial Officer

SHUTTERSTOCK VENTURES LLC

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

SHUTTERSTOCK STUDIOS LLC

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

GENERAL PURPOSE LLC

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

SHUTTERSTOCK AI, INC.

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

SHUTTER IMAGES INC.

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

TURBOSQUID, INC.

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

SHUTTERSTOCK SERVICES, INC.

By: /s/ Jarrod Yahes
Name: Jarrod Yahes
Title: Treasurer

Signature Page to
Shutterstock, Inc. Credit Agreement

BANK OF AMERICA, N.A.,
as Administrative Agent

By: /s/ Erik Truette
Name: Erik Truette
Title: Vice President

Signature Page to
Shutterstock, Inc. Credit Agreement

BANK OF AMERICA, N.A.,
as a Lender, L/C Issuer and Swingline Lender

By: /s/ Jana L. Baker
Name: Jana L. Baker
Title: Senior Vice President

Signature Page to
Shutterstock, Inc. Credit Agreement

TRUIST BANK,
as a Lender

By: /s/ Alfonso Brigham
Name: Alfonso Brigham
Title: Director

Signature Page to
Shutterstock, Inc. Credit Agreement

SCHEDULE 2.01A

COMMITMENTS
AND APPLICABLE PERCENTAGES

Lender	Commitment	Applicable Percentage
Bank of America, N.A.	$ 50,000,000.00	50.000000000%
Truist Bank	$ 50,000,000.00	50.000000000%
Total	**$100,000,000.00**	**100.000000000%**

SCHEDULE 2.01B

SWINGLINE COMMITMENTS

Lender	Swingline Commitment
Bank of America, N.A.	$ 25,000,000
Total	**$ 25,000,000**

SCHEDULE 2.01C

LETTER OF CREDIT COMMITMENTS

Lender	Letter of Credit Commitment
Bank of America, N.A.	$ 25,000,000
Total	**$ 25,000,000**

SCHEDULE 2.01D

EXISTING LETTERS OF CREDIT

ISSUING BANK	LC NUMBER	AMOUNT	ISSUE DATE	EXPIRY DATE
BANK OF AMERICA, N.A.	[*]	$1,698,637.75	1/29/2020	1/29/2023

SCHEDULE 5.05

SUPPLEMENT TO INTERIM FINANCIAL STATEMENTS

1. None.

SCHEDULE 5.13

SUBSIDIARIES,
OTHER EQUITY INVESTMENTS

Part (a). Subsidiaries.

Shutterstock Services, Inc.
Shutterstock Ventures, LLC
Shutterstock AI, Inc.
SSquint Partners
Shutterstock Studios LLC
Shutterstock International LLC
General Purpose LLC
Stock, Inc.
Shutter Images, Inc.
TurboSquid, Inc.
Pattern 89, Inc.
Shutterstock (UK) Ltd
Shutterstock Japan GK
Shutterstock Hong Kong Ltd
Shutterstock Australia
Shutterstock GmbH
Shutterstock (France) SAS
Shutterstock Italy Srl
Shutterstock Korea Ltd
Shutterstock Images C.V.
Shutterstock Singapore PTE Ltd
Shutterstock Ireland Ltd
Shutterstock Canada ULC
Shutterstock Netherlands B.V.
Shutterstock Brazil Servicos de Imagem Ltda
Shutterstock International Services APAC PTE Ltd
Shutterstock Romania S.R.L.
Rex Features (Holdings) Ltd
Rex Features Ltd
Shutterstock.AI, International Ltd. (UK)
Datasine Limited (UK)
Shutterstock International Services EMEA Ltd
Shutterstock International Ventures Ltd

Part (b). Other Equity Investments.

None.

Part (c). Guarantors.

Shutterstock Services, Inc.
Shutterstock Ventures LLC

Shutterstock AI, Inc.

Shutterstock Studios LLC
General Purpose LLC
Shutter Images Inc.
TurboSquid, Inc.

Part (d). Immaterial Subsidiaries.

Pattern 89, Inc.
SSquint Partners
Shutterstock International LLC
Stock, Inc.
Shutterstock.AI, International Ltd. (UK)
Datasine Limited (UK)
Shutterstock International Services EMEA Ltd
Shutterstock International Ventures Ltd

SCHEDULE 7.01

EXISTING LIENS

None.

SCHEDULE 7.03

EXISTING INDEBTEDNESS

None.

SCHEDULE 7.08

TRANSACTIONS WITH AFFILIATES

None.

SCHEDULE 11.02

ADMINISTRATIVE AGENT'S OFFICE;
CERTAIN ADDRESSES FOR NOTICES

SHUTTERSTOCK, INC.:
350 Fifth Avenue, 21st Floor
New York, NY 10118
Attention: Jarrod Yahes, Chief Financial Officer
Telephone: 646-279-2390
Electronic Mail: jyahes@shutterstock.com

ADMINISTRATIVE AGENT:

Administrative Agent's Office
(for payments and Requests for Credit Extensions):
Bank of America, N.A.
Dedicated Servicing
900 West Trade Street
Gateway Village – 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attn: Zachary Vestal
Phone: 980-386-0720
Email: Zachary.vestal@bofa.com
Fax Number: 704-208-3198
Account No.: [*]
Ref: Shutterstock Inc
ABA# [*]

Other Notices as Administrative Agent:
Bank of America, N.A.
Agency Management
900 West Trade Street
Gateway Village – 900 Building
Mail Code: NC1-026-06-03
Charlotte, NC 28255
Attn: Dianna Benner
Phone: 980-386-3754
Email: Dianna.l.benner@bofa.com

L/C ISSUER:

Bank of America, N.A.
Trade Operations
Trade Operations
1 Fleet Way
Mail Code: PA6-580-02-30
Scranton, PA 18507
Attn: Michael A. Grizzanti
Phone: 570-496-9621
Email: michael.a.grizzanti@bofa.com
Fax Number: 800-755-8743

SWINGLINE LENDER:

Bank of America, N.A.
Dedicated Servicing
900 West Trade Street
Gateway Village – 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attn: Zachary Vestal
Phone: 980-386-0720
Email: Zachary.vestal@bofa.com
Fax Number: 704-208-3198
Account No.: [*]
Ref: Shutterstock Inc
ABA# [*]

Exhibit 10.2

SHUTTERSTOCK, INC.
Empire State Building
350 Fifth Avenue, 21st Floor
New York, NY 10118

Paul J. Hennessy
[*]
[*]

Re: EMPLOYMENT AGREEMENT

Dear Paul:

This Employment Agreement (the "***Agreement***") between you (referred to hereinafter as the "***Executive***") and Shutterstock, Inc., a Delaware corporation, including all direct and indirect subsidiaries and affiliated entities (collectively, the "***Company***") sets forth the terms and conditions that shall govern the period of your employment with the Company (referred to hereinafter as "***Employment***" or the "***Employment Period***").

1. **Duties and Scope of Employment.**

(a) **At-Will Employment**. Executive will commence full-time Employment with the Company effective as of July 1, 2022 (the "***Effective Start Date***") and the terms of such Employment will be governed by this Agreement. Executive's Employment with the Company is for no specified period and constitutes "at will" employment. As a result, Executive is free to terminate Employment at any time, with or without advance notice, and for any reason or for no reason. Similarly, the Company is free to terminate Executive's Employment at any time, with or without advance notice, and with or without Cause (as defined below). Furthermore, although terms and conditions of Executive's Employment with the Company may change over time, nothing shall change the at-will nature of Executive's Employment.

(b) **Position and Responsibilities.** During the Employment Period, the Company agrees to employ Executive in the position Chief Executive Officer. Executive will report to the Company's Board of Directors (the "**Board**"), and Executive will be working out of the Company's office in New York City, New York. Executive will perform the duties and responsibilities and authority customarily performed and held by an employee in Executive's position or as otherwise may be assigned or delegated to Executive by Executive's Supervisor.

(c) **Obligations to the Company.** During the Employment Period, Executive shall perform Executive's duties faithfully and to the best of Executive's ability and will devote Executive's full business efforts and time to the Company. Notwithstanding the foregoing, Executive will be permitted to (a) with the prior written approval of the Board (which approval shall not be unreasonably withheld), act or serve as a director, trustee, or committee member of any non-profit, civic, or charitable organization, as long as such activities are disclosed in writing to the Company's General Counsel in accordance with the Company's policies and rules, with a copy of such notice to the Board of Directors, (b) with the prior written approval of the Board (which approval shall not be unreasonably withheld), act or serve as a director of one publicly traded company that is not a competitor of the Company as long as such activities are disclosed in writing to the Company's General Counsel in accordance with the Company's policies and rules, with a copy of such notice to the Board of Directors (c) purchase or own less than five percent (5%) of the publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation; and (d) deliver lectures, fulfill speaking engagements, teach at educational institution or manage personal investments; provided that such activities do not individually or in the aggregate interfere with the performance of Executive's duties under this Agreement or create a potential business or fiduciary conflict. Executive may serve on the board of directors of unaffiliated companies that are not competitive with the business of the Company to the extent such service or participation does not interfere with Executive's employment or duties under this Agreement and that Executive has advised the Board at least thirty (30) days prior to commencing service, and the Board have consented (which consent shall not be unreasonably withheld) to, such additional corporate board service. Executive shall comply with the Company's policies and rules, as they may be in effect from time to time during Executive's Employment.

(d) **Confidentiality.** All information learned or developed by the Executive during the course of the Executive's employment by the Company or any subsidiary thereof will be deemed "Confidential Information" under the terms of this Agreement. The Executive will not disclose to any person at any time or use in any way, except as directed by the Company, either during or after the employment of the Executive by the Company, any Confidential Information. The foregoing restrictions shall not apply to information which is or becomes part of the public domain though no act or failure to act by the Executive. In addition to the foregoing, in the process of the Executive's employment with the Company, or thereafter, under no condition is the Executive to use or disclose to the Company, or incorporate or use in any of Executive's work for the Company, any confidential information imparted to the Executive or with which Executive may have come into contact while in the employ of Executive's former employer(s).

(i) Pursuant to 18 U.S.C. § 1833(b), Executive acknowledges that Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret if he/she (i) makes such disclosure in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and such disclosure is made solely for the purpose of reporting or investigating a suspected violation of law; or (ii) such disclosure was made in a complaint or other document filed in a lawsuit or other proceeding if such filing is made under seal. Executive understands that if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding if Executive (x) files any document containing the trade secret under seal, and (y) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement, or any other agreement that Executive has with the Company, is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section. Further, nothing in this Agreement or any other agreement that Executive has with the Company shall prohibit or restrict Executive from making any voluntary disclosure of information or documents concerning possible violations of law to any governmental agency or legislative body, or any self-regulatory organization, in each case, without advance notice to the Company.

2. **Cash and Incentive Compensation.**

(a) **Base Salary.** The Company shall pay Executive, as compensation for Executive's services, a base salary at a gross annual rate of $700,000, less all required tax withholdings and other applicable deductions, in accordance with the Company's standard payroll procedures. Executive's Base Salary will be subject to review and adjustments by the Compensation Committee of the Board (the "***Committee***"), in its sole discretion, in connection with the Company's normal performance review process. The annual compensation specified in this subsection (a), together with any modifications to such compensation made from time to time, is referred to in this Agreement as the "***Base Salary***."

(b) **Cash Incentive Bonus.** Executive will be eligible to earn an annual cash incentive bonus (the "***Cash Bonus***"), less all required tax withholdings and other applicable deductions, each calendar year during the Employment Period based upon the achievement of objective or subjective criteria (collectively, the "***Performance Goals***") established by the Company in connection with the Company's annual short term incentive compensation plan and approved by the Board, the Committee of the Board, or a delegate of either the Board or the Committee (the "***Delegate***"), as applicable in its sole discretion. The initial target amount for any such Cash Bonus will be 100% of Executive's Base Salary (the "***Target Bonus Percentage***"). Executive's Target Bonus Percentage for any subsequent year may be adjusted, as determined in the sole discretion of the Board, the Committee or the Delegate, as applicable. Executive shall not earn a Cash Bonus unless Executive is employed by the Company on the date when such Cash Bonus is actually paid by the Company. Executive shall be eligible for the full year Cash Bonus for the Company's fiscal year 2022 .

(c) **Restricted Stock Units**. Subject to the approval of the Board or the Committee, as applicable, the Company shall grant Executive restricted stock units of the Company's common stock in an amount equal to the fair market value of $15,000,000 (the "***RSU Award***"). The number of RSUs granted to Executive will be determined by dividing the fair market value of the RSU Award by the average of the Company's closing price for a share of our common stock during the 30-day period ending on the date immediately prior to the Grant Date (as defined below), rounded down to the nearest whole number of shares. The RSU Award shall be granted on or after, but in all events by no later than the first business day of the calendar month next following, the Effective Start Date, at the discretion of the Board, the Committee or a Delegate (the "***Grant Date***"), and shall be settled in shares of Company common stock. The RSU Award will be subject to the terms, definitions and provisions of the Company's 2022 Omnibus Equity Incentive Plan (the "***Equity Plan***") and the restricted stock unit agreement by and between Executive and the Company (the "***RSU Agreement***"), both of which documents are incorporated herein by reference. Except as otherwise expressly provided in this Agreement, 33% of the RSU Award will vest on each of the first and second anniversaries of the Grant Date and 34% of the RSU Award will vest on the third anniversary of the Grant Date, in each case subject to Executive continuing to provide Services (as defined in the Equity Plan) to the Company through the relevant vesting dates. Executive may be eligible for future awards under the Equity Plan, as determined in the sole discretion of the Committee, which award will be subject to the terms and conditions, including any vesting conditions, as set forth in the applicable award agreement.

(d) **Performance Stock Units**. Subject to the approval of the Board or the Committee, as applicable, the Company shall grant Executive performance restricted stock units ("PSUs") of the Company's common stock as set forth herein in an amount equal to the fair market value of $15,000,000 (the "PSU Award"). The number of PSUs granted to Executive will be determined by dividing the fair market value of the PSU Award by the average of the Company's closing price for a share of our common stock during the 30-day period ending on the date immediately prior to the Grant Date, rounded down to the nearest whole number of shares. The PSUs will vest, if at all, on July 1, 2025 based on the achievement of targets and completion of service requirements, consistent with those performance targets and service requirements to be established and approved by the Board, Committee or a Delegate, as applicable, prior to December 31, 2022. Any vested PSUs will be settled in shares of Company common stock. The PSU Award will be subject to the terms, definitions and provisions of the Equity Plan and the performance restricted stock unit agreement ("PSU Award Agreement") by and between Executive and the Company and, vesting shall be subject to Executive continuing to provide Services (as defined in the Equity Plan) to the Company through the relevant target achievement dates and any applicable service requirements.

3. **Recoupment**. The incentive compensation payable to Executive pursuant to Sections 2(b), 2(c) and 2(d) hereof shall be subject to reduction, cancellation, forfeiture or recoupment as and to the extent required by the applicable provisions of any law (including without limitation Section 10D of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder), government regulation or stock exchange listing requirement, or clawback policy or provision implemented by the Company pursuant to such law, regulation or listing requirement from time to time.

4. **Employee Benefits.** During the Employment Period, Executive shall be eligible to participate in the employee benefit plans maintained by the Company and generally available to similarly situated employees of the Company, subject in each case to the generally applicable terms and conditions of the plan in question and to the determinations of any person or committee administering such employee benefit plan. The Company reserves the right to cancel or change the employee benefit plans and programs it offers to its employees at any time.

5. **Business Expenses.** The Company will reimburse Executive for necessary and reasonable business expenses incurred in connection with Executive's duties hereunder. In order to receive any such reimbursement, the Executive must comply with generally applicable policies, practices and procedures of the Company with respect to reimbursement for, and submission of expense reports, receipts or similar documentation of, such expenses.

6. **Rights Upon Termination.** Except as expressly provided in Section 7, upon the termination of Executive's Employment for any reason, Executive shall only be entitled to (i) the benefits accrued or earned in accordance with any applicable Company-provided plans, policies, and arrangements for the period immediately preceding the effective date of the termination of Employment and (ii) such other compensation or benefits from the Company as may be required by law (collectively, the "***Accrued Benefits***").

7. Termination Benefits.

(a) **Termination without Cause not in Connection with a Change in Control**. If the Company terminates Executive's employment with the Company for a reason other than for Cause, Executive becoming Disabled or Executive's death at any time other than during the twelve (12)-month period immediately following a Change in Control, then, subject to Section 8, Executive will receive the following severance benefits from the Company:

(i) Accrued Compensation. The Company will pay Executive all Accrued Benefits.

(ii) Severance Payment. Commencing on the sixtieth day after the date of the Executive's termination of employment, the Company shall continue to pay the Executive the Executive's Base Salary, at the rate in effect immediately prior to such termination of employment, for the Severance Period, less all required tax withholdings and other applicable deductions, which will be paid in accordance with the Company's regular payroll procedures; provided, however, that any such salary otherwise payable during the 60-day period immediately following the date of such termination of employment shall be paid to the Executive sixty days following such termination of employment.

(iii) Continued Employee Benefits. If Executive elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("***COBRA***") for Executive and Executive's eligible dependents, within the time period prescribed pursuant to COBRA, the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination or resignation) until the earlier of (A) the end of the Severance Period, or (B) the date upon which Executive and/or Executive's eligible dependents become covered under similar plans. COBRA reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy and will be taxable to the extent required to avoid adverse consequences to Executive or the Company under either Code Section 105(h) or the Patient Protection and Affordable Care Act of 2010.

(iv) Equity. (A) One hundred percent (100%) of Executive's unvested and outstanding RSU Awards shall immediately vest and become exercisable as of the date of Executive's termination and (B) pro-rated PSU award based upon the date of termination which remain subject to the performance criteria thereunder and shall vest if such criteria is met. For the avoidance of doubt, the terms of subclause (A) shall apply in the event that Company terminates Executive prior to the Effective Start Date but after the execution of this Agreement.

(v) Pro-Rated Bonus Payment. Executive will receive a pro-rated annual bonus for the fiscal year in which Executive terminates employment equal to (x) the annual bonus that Executive would have received based on actual performance for such fiscal year if Executive had remained in the employ of the Company for the entire fiscal year, if any, *multiplied by* (y) a fraction, the numerator of which is the number of days Executive was in the employ of the Company during the fiscal year including the Termination Date and the denominator of which is 365 (the "***Pro-Rated Bonus***"). The Pro-Rated Bonus, if any, shall be paid at the same time annual bonuses are paid by the Company to other executives of the Company for the fiscal year in which Executive terminated employment, but no later than March 15th of the calendar year following the calendar year in which Executive terminated employment.

(b) **Termination without Cause or Resignation for Good Reason in Connection with a Change in Control**. If at the same time of, or during the twelve (12)-month period immediately following a Change in Control, (x) the Company terminates Executive's employment with the Company for a reason other than for Cause, Executive becoming Disabled or Executive's death, or (y) Executive resigns for Good Reason, then, subject to Section 8, Executive will receive the following severance benefits from the Company in lieu of the benefits described in Section 7(a) above:

(i) Accrued Compensation. The Company will pay Executive all Accrued Benefits.

(ii) Severance Payment. Executive will receive a lump sum severance payment equal to eighteen (18) months' of Executive's Base Salary, at the rate in effect immediately prior to such termination of employment, less all required tax withholdings and other applicable deductions, which will be paid sixty days following such termination of employment.

(iii) Continued Employee Benefits. If Executive elects continuation coverage pursuant to COBRA for Executive and Executive's eligible dependents, within the time period prescribed pursuant to COBRA, the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination or resignation) until the earlier of (A) a period of twelve (12) months from the last date of employment of Executive with the Company, or (B) the date upon which Executive and/or Executive's eligible dependents become covered under similar plans. COBRA reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy and will be taxable to the extent required to avoid adverse consequences to Executive or the Company under either Code Section 105(h) or the Patient Protection and Affordable Care Act of 2010.

(iv) Equity. Unless otherwise set forth in a PSU Award Agreement, all of Executive's unvested and outstanding equity awards shall immediately vest and become exercisable as of the date of Executive's termination.

(v) Target Bonus Payment. Executive will receive a lump sum severance payment equal to one hundred percent (100%) of Executive's full target bonus amount for the fiscal year in effect at the date of such termination of employment (or, if greater, as in effect for the fiscal year in which the Change in Control occurs), less all required tax withholdings and other applicable deductions.

(c) **Disability; Death; Voluntary Resignation; Termination for Cause**. If Executive's employment with the Company is terminated due to (i) Executive becoming Disabled or Executive's death, (ii) Executive's voluntary resignation (other than for Good Reason at the time of or during the twelve (12) month period immediately following a Change of Control), or

(iii) the Company's termination of Executive's employment with the Company for Cause, then Executive or Executive's estate (as the case may be) will receive the Accrued Benefits, but will not be entitled to any other compensation or benefits from the Company except to the extent required by law (for example, COBRA). All Accrued Benefits shall in all cases be paid within thirty (30) days of Executive's termination of employment (or such earlier date as required by applicable law) pursuant to this Section 7(c).

(d) **Exclusive Remedy**. In the event of a termination of Executive's employment with the Company, the provisions of this Section 7 are intended to be and are exclusive and in lieu of any other rights or remedies to which Executive or the Company may otherwise be entitled, whether at law, tort or contract, in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Executive will be entitled to no other severance, benefits, compensation or other payments or rights upon a termination of employment, including, without limitation, any severance payments and/or benefits provided in the Employment Agreement, other than those benefits expressly set forth in Section 7 of this Agreement or pursuant to written equity award agreements with the Company.

(e) **No Duty to Mitigate**. Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

8. **Conditions to Receipt of Severance**.

(a) **Release of Claims Agreement**. The receipt of any severance payments or benefits pursuant to Section 7 of this Agreement, other than, for the avoidance of doubt, the Accrued Benefits, is subject to Executive signing and not revoking a separation agreement and release of claims in a form acceptable to the Company (the "***Release***"), which must become effective no later than the sixtieth (60th) day following Executive's termination of employment (the "***Release Deadline***"), and if not, Executive will forfeit any right to severance payments or benefits under this Agreement. To become effective, the Release must be executed by Executive and any revocation periods (as required by statute, regulation, or otherwise) must have expired without Executive having revoked the Release. In addition, in no event will severance payments or benefits be paid or provided until the Release actually becomes effective. If the termination of employment occurs at a time during the calendar year where the Release Deadline could occur in the calendar year following the calendar year in which Executive's termination of employment occurs, then any severance payments or benefits under this Agreement that would be considered Deferred Payments (as defined in Section 8(c)(i)) will be paid on the first payroll date to occur during the calendar year following the calendar year in which such termination occurs, or such later time as required by (i) the payment schedule applicable to each payment or benefit as set forth in Section 7, (ii) the date the Release becomes effective, or (iii) Section 8(c)(ii); provided that the first payment shall include all amounts that would have been paid to Executive if payment had commenced on the date of Executive's termination of employment.

(b) **Non-Disclosure Agreement**. As a condition to employment and to Executive's receipt of any payments or benefits under Section 7 will be subject to Executive's continued compliance with the requirements set for in the Non-Disclosure Agreement (as defined in Section 10(a) below).

(c) **Section 409A**.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Executive, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits, are considered deferred compensation not exempt under Section 409A (together, the "***Deferred Payments***") will be paid or otherwise provided until Executive has a "separation from service" within the meaning of Section 409A. For purposes of this Agreement, any reference to "termination of employment," "termination" or any similar term shall be construed to mean a "separation from service" within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Executive has a "separation from service" within the meaning of Section 409A.

(ii) Notwithstanding anything to the contrary in this Agreement, if Executive is a "***specified employee***" within the meaning of Section 409A at the time of Executive's termination of employment (other than due to death), then the Deferred Payments, if any, that are payable within the first six (6) months following Executive's separation from service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Executive's separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following Executive's separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Executive's death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iii) Without limitation, any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations is not intended to constitute Deferred Payments for purposes of clause (i) above.

(iv) Without limitation, any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit is not intended to constitute Deferred Payments for purposes of clause (i) above. Any payment intended to qualify under this exemption must be made within the allowable time period specified in Section 1.409A-1(b)(9)(iii) of the Treasury Regulations.

(v) To the extent that reimbursements or in-kind benefits under this Agreement constitute non-exempt "nonqualified deferred compensation" for purposes of Section 409A, (1) all reimbursements hereunder shall be made on or prior to the last day of the calendar year following the calendar year in which the expense was incurred by Executive, (2) any right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (3) the amount of expenses eligible for reimbursement or in-kind benefits provided in any calendar year shall not in any way affect the expenses eligible for reimbursement or in-kind benefits to be provided, in any other calendar year.

(vi) The payments and benefits provided under Sections 7(a) and 7(b) are intended to be exempt from or comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be exempt or so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions that are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Executive under Section 409A.

9. **Definition of Terms**. The following terms referred to in this Agreement will have the following meanings:

(a) **Cause**. "Cause" means:

(i) Executive's gross negligence or willful misconduct in the performance of his or her duties and responsibilities to the Company or Executive's violation of any written Company policy;

(ii) Executive's commission of any act of fraud, theft, embezzlement, financial dishonesty or any other willful misconduct that has caused or is reasonably expected to result in injury to the Company;

(iii) Executive's conviction of, or pleading guilty or nolo contendre to, any felony or a lesser crime involving dishonesty or moral turpitude;

(iv) Executive's alcohol abuse or other substance abuse;

(v) Executive's unauthorized use or disclosure of any proprietary information or trade secrets (other than as explicitly set forth in this Agreement) of the Company or any other party to whom Executive owes an obligation of nondisclosure as a result of his or her relationship with the Company; or

(vi) Executive's material breach of any of his or her obligations under any written agreement or covenant with the Company.

(b) **Change in Control**. "Change in Control" shall have the meaning ascribed to such term in the Company's 2022 Omnibus Equity Incentive Plan, provided that any such event constitutes a "change in control event" under Treasury Regulation Section 1.409A-3(i)(5)(i).

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

(d) **Disability**. "Disability" or "Disabled" means that Executive is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than one (1) year.

(e) **Good Reason**. "Good Reason" means the occurrence, without Executive's consent, of one or more of the following:

(i) A material reduction in Executive's duties, authorities or responsibilities, relative to Executive's duties, authorities or responsibilities in effect immediately prior to such reduction; provided, however, that not being named the Chief Executive Officer of the acquiring corporation following a Change in Control of the Company will not constitute Good Reason;

(ii) A material reduction in Executive's base compensation (except where there is a reduction applicable to all similarly situated executive officers generally); provided, that a reduction of less than ten percent (10%) will not be considered a material reduction in base compensation; or

(iii) A material breach by the Company of a material provision of this Agreement; in each case, only if Executive provides notice to the Company of the existence of the applicable condition described in Section 9(e), specifically identifying the acts or omissions, within thirty (30) days of the Executive's knowledge of the initial existence of the condition, the Company fails to remedy the condition within thirty (30) days thereafter, and within the (30) day period immediately following such failure to remedy, you elect to terminate your Employment.

(f) **Section 409A**. "Section 409A" means Code Section 409A, and the final regulations and any guidance promulgated thereunder or any state law equivalent.

(g) **Section 409A Limit**. "Section 409A Limit" will mean two (2) times the lesser of: (i) Executive's annualized compensation based upon the annual rate of pay paid to Executive during Executive's taxable year preceding Executive's taxable year of his or her separation from service as determined under Treasury Regulation Section 1.409A- 1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Internal Revenue Code for the year in which Executive's separation from service occurred.

(h) **Severance Period**. "Severance Period" shall mean eighteen (18) months.

10. **Pre-Employment Conditions.**

(a) **Non-Disclosure Agreement**. Executive's acceptance of this offer and Employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Company's non-disclosure agreement (the "***Non-Disclosure Agreement***"), prior to or on Executive's Effective Start Date.

(b) **Right to Work**. For purposes of federal immigration law, you will be required, if you have not already, to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of the Effective Start Date, or our Employment relationship with you may be terminated.

(c) **Verification of Information**. This Agreement is also contingent upon the successful verification of the information you provided to the Company during your application process, as well as a general background check performed by the Company to confirm your suitability for Employment. By accepting this Agreement, you warrant that all information provided by you is true and correct to the best of your knowledge, you agree to execute any and all documentation necessary for the Company to conduct a background check and you expressly release the Company from any claim or cause of action arising out of the Company's verification of such information.

11. **Arbitration**.

(a) **Arbitration**. In consideration of your Employment with the Company, its promise to arbitrate all employment-related disputes, and your receipt of any compensation, pay raises and other benefits paid to you by the Company, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder or benefit plan of the Company in their capacity as such or otherwise) arising out of, relating to, or resulting from your Employment with the Company or termination thereof, including any breach of this Agreement, will be subject to binding arbitration.

(b) **Dispute Resolution**. Disputes that Executive agrees to arbitrate, and thereby agrees to waive any right to a jury trial, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes Oxley Act, the Worker Adjustment and Retraining Notification Act, the New York State Human Rights Law, New York Equal Rights Law, New York Whistleblower Protection Law, New York Family Leave Law, New York Equal Pay Law, the New York City Human Rights Law, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. Executive further understands that this agreement to arbitrate also applies to any disputes that the Company may have with Executive.

(c) **Procedure**. Executive agrees that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("***JAMS***"), pursuant to its Employment Arbitration Rules & Procedures (the "***JAMS Rules***"). The arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The arbitrator shall have the power to award any remedies available under applicable law, and the arbitrator shall award attorneys' fees and costs to the prevailing party, except as prohibited by law. The Company will pay for any administrative or hearing fees charged by the administrator or JAMS, and all arbitrator's fees, except that Executive shall pay any filing fees associated with any arbitration that Executive initiates, but only so much of the filing fee as Executive would have instead paid had Executive filed a complaint in a court of law. Executive agrees that the arbitrator shall administer and conduct any arbitration in accordance with New York law, and that the arbitrator shall apply substantive and procedural New York law to any dispute or claim, without reference to the rules of conflict of law. To the extent that the JAMS Rules conflict with New York law, New York law shall take precedence. The decision of the arbitrator shall be in writing. Any arbitration under this Agreement shall be conducted in New York County, New York.

(d) **Remedy**. Except as provided by the Act, arbitration shall be the sole, exclusive, and final remedy for any dispute between you and the Company. **Accordingly, except as provided by the Act and this Agreement, neither you nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration**. Notwithstanding, the arbitrator will not have the authority to disregard or refuse to enforce any lawful Company policy, and the arbitrator will not order or require the Company to adopt a policy not otherwise required by law that the Company has not adopted.

(e) **Administrative Relief**. You are not prohibited from pursuing an administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers' Compensation Board. However, you may not pursue court action regarding any such claim, except as permitted by law.

(f) **Voluntary Nature of Agreement**. You acknowledge and agree that you are executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. You further acknowledge and agree that you have carefully read this Agreement and that you have asked any questions needed for you to understand the terms, consequences and binding effect of this Agreement and fully understand it, including that ***YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL***. Finally, you agree that you have been provided an opportunity to seek the advice of an attorney of your choice before signing this Agreement.

12. **Successors.**

(a) **Company's Successors.** This Agreement shall be binding upon any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets. For all purposes under this Agreement, the term "***Company***" shall include any successor to the Company's business or assets that become bound by this Agreement.

(b) **Your Successors.** This Agreement and all of Executive's rights hereunder shall inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

13. **Miscellaneous Provisions.**

(a) **Indemnification.** The Company shall indemnify Executive to the maximum extent permitted by applicable law and the Company's Certificate of Incorporation and Bylaws with respect to Executive's service and Executive shall also be covered under a directors and officers liability insurance policy paid for by the Company to the extent that the Company maintains such a liability insurance policy now or in the future.

(b) **Headings**. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(c) **Notice.**

(i) General. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In Executive's case, mailed notices shall be addressed to Executive at the home address that Executive most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(ii) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason will be communicated by a notice of termination to the other party hereto given in accordance with Section 13(c)(i) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon and will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated. The failure by Executive or the Company to include in the notice any fact or circumstance which contributes to a showing of Good Reason or Cause, as applicable, will not waive any right of Executive or the Company, as applicable, hereunder or preclude Executive or the Company, as applicable, from asserting such fact or circumstance in enforcing his or her or its rights hereunder, as applicable.

(d) **Modifications and Waivers.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(e) **Whole Agreement.** No other agreements, representations or understandings (whether oral or written and whether express or implied) that are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof. This Agreement and the Non-Disclosure Agreement contain the entire understanding of the parties with respect to the subject matter hereof.

(f) **Withholding Taxes.** All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(g) **Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of New York without giving effect to provisions governing the choice of law.

(h) **Severability.** If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is rendered illegal by any present or future statute, law, ordinance or regulation (collectively, the "***Law***") then that provision shall be curtailed or limited only to the minimum extent necessary to bring the provision into compliance with the Law. All the other terms and provisions of this Agreement shall continue in full force and effect without impairment or limitation.

(i) **No Assignment.** This Agreement and all of your rights and obligations hereunder are personal to you and may not be transferred or assigned by you at any time. The Company may assign its rights under this Agreement to any entity that assumes the Company's obligations hereunder in connection with any sale or transfer to such entity of all or a substantial portion of the Company's assets.

(j) **Acknowledgment**. You acknowledge that you have had the opportunity to discuss this matter with and obtain advice from your personal attorney, have had sufficient time to, and have carefully read and fully understand all the provisions of this Agreement, and are knowingly and voluntarily entering into this Agreement.

(k) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. After you have had an opportunity to review this Agreement, please feel free to contact me if you have any questions or comments. To indicate your acceptance of this Agreement, please sign and date this letter in the space provided below and return it to the Company.

Very truly yours,

SHUTTERSTOCK, INC.

By: /s/ Sara Birmingham

Name: Sara Birmingham

Title: Chief Human Resources Officer

ACCEPTED AND AGREED:

PAUL HENNESSY

/s/ Paul Hennessy

May 8, 2022
Date

SHUTTERSTOCK ACQUIRES POND5,
THE WORLD'S LARGEST VIDEO MARKETPLACE

The acquisition solidifies Shutterstock's position as the marketplace leader for premium editorial and commercial video and music content for creative professionals and enterprises

New York, NY, May 11, 2022 - Shutterstock, Inc. (NYSE: SSTK), the leading global creative platform for transformative brands and media companies, today announced the acquisition of Pond5, the world's largest video-first content marketplace for filmmakers, media organizations, and marketers worldwide. Pond5 is the world's leading online marketplace for royalty-free and editorial video, with customers including Netflix, Disney, NBC, BBC, Discovery Channel and The Wall Street Journal. Pond5's comprehensive collection includes 30 million licensable video clips, 1.6 million music tracks and 1.7 million sound effects assets.

This acquisition solidifies Shutterstock's position as the premium destination for its global customer community for unique access to editorial content, video footage and music. Integrated with Shutterstock's workflow applications, this expansive content library enables Shutterstock's global customer community to create with confidence, and provides value to Pond5's 115K+ contributors, by expanding the distribution of their content to new regions and customers. Shutterstock Studios customers are also able to leverage their access to the offering, integrating clips from Pond5's unparalleled offering into powerful short form and long form content.

Pond5 combines their vast collection – which can be seen in various destinations, ranging from films and TV shows including Succession and The Queen's Gambit, to YouTube videos, video games and Super Bowl ads – with a best-in-class search experience that makes it seamless for creators to find what they need, even for the most unpredictable and niche content searches.

Since its inception in 2006, Pond5 has built an expanding contributor network of over 115,000 active contributors across 180 countries, who upload over 2.5 million assets each month. Additionally, Pond5's premium editorial content partners, such as Reuters, PA Media and British Movietone, will provide Shutterstock's global customer community access to up-to-the-minute and archival news footage.

"The acquisition of Pond5 provides immense value for our global customer base, with unparalleled access to one of the largest collections of editorial and commercial video content in the world," said **Jon Oringer, Interim Chief Executive Officer at Shutterstock**. "Our contributors will also benefit from having their work showcased on Pond5's platform, expanding their portfolio to new customers."

Jamie Elden, Chief Revenue Officer at Shutterstock said, "With this acquisition, we are able to offer our customers across global agency, corporate, and media channels access to one of the largest premium archival collections in the industry. Shutterstock is constantly reinventing, and this acquisition brings together powerful creators and exceptional content to ensure our customers have world class video, music and editorial collections at their fingertips."

Tom Crary, CEO at Pond5 said, "We could not be more thrilled to join forces with Shutterstock to lead the video and music space. Our combined editorial offerings will be a competitive force in the market, and offer additional choice to customers with highly exclusive editorial video content."

Transaction Highlights:

- Consideration for the transaction consists of $210 million of cash paid at closing
- Further scales Shutterstock's video business and expands Shutterstock's editorial offering with unique and high-quality exclusive video content
- Complementary customer base with powerful relationships with the world's largest media outlets, social media platforms, and OTT streaming companies
- Maintaining 2022 revenue and adjusted EBITDA margin guidance
- Immediately accretive to 2022 adjusted EBITDA, even after one-time transaction related costs

CapM Advisors acted as financial advisor, and Cahill Gordon & Reindel LLP acted as legal advisor to Shutterstock. Jefferies LLC acted as financial advisor, and Goodwin Procter LLP acted as legal advisor to Pond5. Investors can find a link to the presentation materials on the Pond5 transaction at https://investor.shutterstock.com

About Shutterstock, Inc.

Shutterstock, Inc. (NYSE: SSTK), is the leading global creative platform for transformative brands and media companies. Directly and through its group subsidiaries, Shutterstock's comprehensive collection includes high-quality licensed photographs, vectors, illustrations, 3D models, videos and music. Working with its growing community of over 2 million contributors, Shutterstock adds hundreds of thousands of images each week, and currently has more than 405 million images and more than 25 million video clips available.

Headquartered in New York City, Shutterstock has offices around the world and customers in more than 150 countries. The Company also owns Pond5, the world's largest video marketplace, TurboSquid, the world's largest 3D content marketplace, PicMonkey, a leading online graphic design and image editing platform; Offset, a high-end image collection; Shutterstock Studios, an end-to-end custom creative shop; PremiumBeat, a curated royalty-free music library; Shutterstock Editorial, a premier source of editorial images and videos for the world's media; Amper Music, an AI-driven music platform; and Bigstock, a value-oriented stock media offering.

For more information, please visit www.shutterstock.com and follow Shutterstock on Twitter and on Facebook.

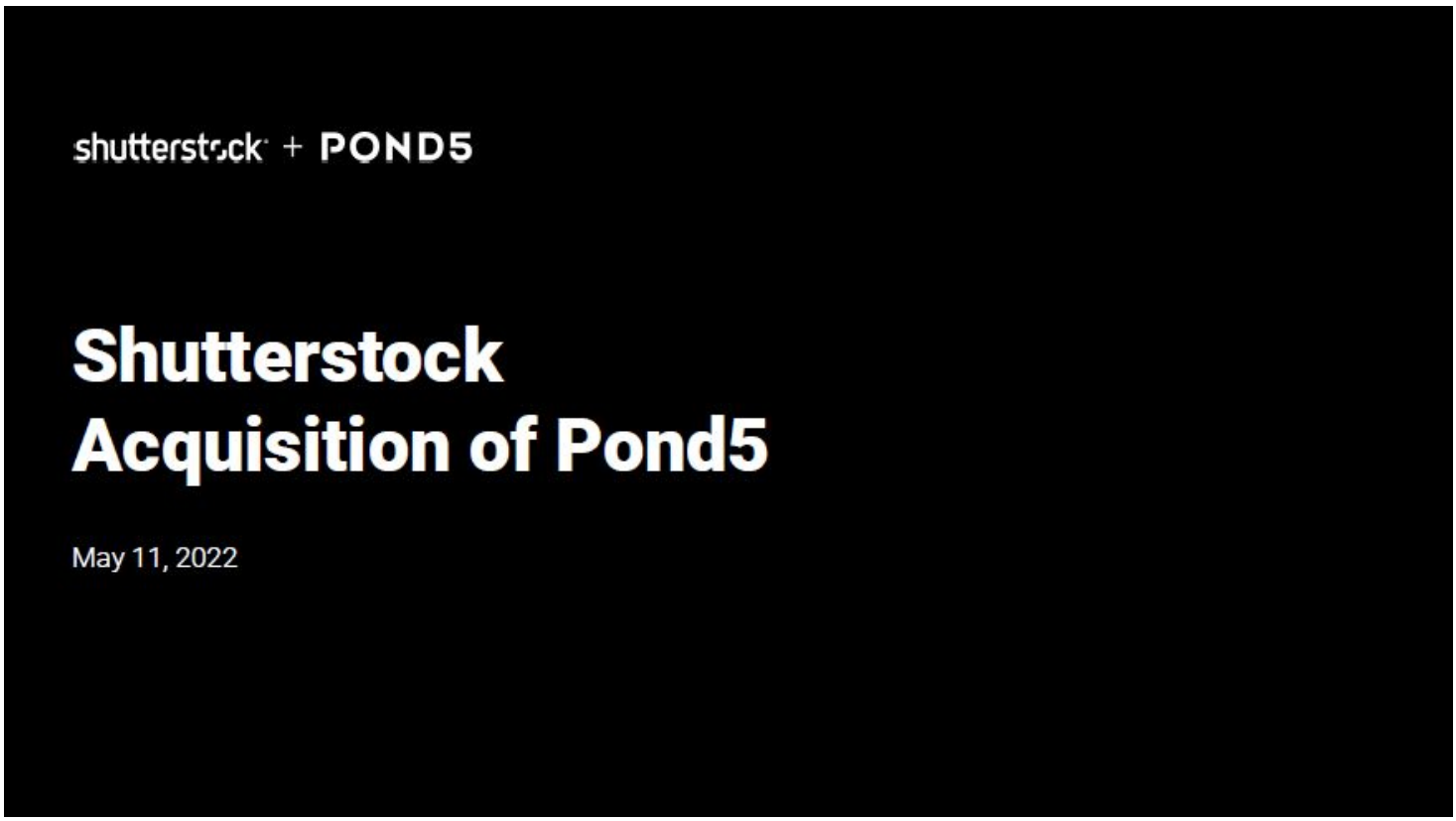
About Pond5
Pond5 strives to create world-class storytellers by providing creators of all types with the content they need to tell stories, share knowledge, and inspire audiences.

Driven by a commitment to its passionate and growing global community of more than 115,000 professional visual and audio artists, Pond5 provides a platform where creative work can flourish, and artists can make a sustainable living with industry-leading revenue shares. Pond5 serves the needs of creators across industries—from individual users to major corporations—with competitive pricing and an array of purchase options including a unique pay per item model. Purchases are backed by a broad and flexible license, a best price guarantee, and a dedicated team standing by to provide expert assistance.

FORWARD-LOOKING STATEMENTS
This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact are forward-looking. Examples of forward-looking statements include, but are not limited to, statements regarding guidance, industry prospects, future business, future results of operations or financial condition, future dividends, our ability to consummate acquisitions and integrate the businesses we have acquired or may acquire into our existing operations, new or planned features, products or services, management strategies, our competitive position and the COVID-19 pandemic. You can identify forward-looking statements by words such as "may," "will," "would," "should," "could," "expect," "aim," "anticipate," "believe," "estimate," "intend," "plan," "predict," "project," "seek," "potential," "opportunities" and other similar expressions and the negatives of such expressions. However, not all forward-looking statements contain these words. Forward-looking statements are subject to known and unknown risks, uncertainties and other factors that could cause our actual results to differ materially from those expressed or implied by the forward-looking statements contained herein. Such risks and uncertainties include, among others, those discussed under the caption "Risk Factors" in our most recent Annual Report on Form 10-K, as well as in other documents that the Company may file from time to time with the Securities and Exchange Commission. As a result of such risks, uncertainties and factors, Shutterstock's actual results may differ materially from any future results, performance or achievements discussed in or implied by the forward-looking statements contained herein. The forward-looking statements contained in this press release are made only as of this date and Shutterstock assumes no obligation to update the information included in this press release or revise any forward-looking statements, whether as a result of new information, future developments or otherwise, except as required by law.

Press Contact
Aimée Leabon
press@shutterstock.com
917-563-4991

Exhibit 99.2



Forward-Looking Statements

This presentation contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact are forward-looking. Examples of forward-looking statements include, but are not limited to, statements regarding guidance, industry prospects, future business, future results of operations or financial condition, future dividends, our ability to consummate acquisitions and integrate the businesses we have acquired or may acquire into our existing operations, new or planned features, products or services, management strategies, our competitive position and the COVID-19 pandemic. You can identify forward-looking statements by words such as "may," "will," "would," "should," "could," "expect," "aim," "anticipate," "believe," "estimate," "intend," "plan," "predict," "project," "seek," "potential," "opportunities" and other similar expressions and the negatives of such expressions. However, not all forward-looking statements contain these words. Forward-looking statements are subject to known and unknown risks, uncertainties and other factors that could cause our actual results to differ materially from those expressed or implied by the forward-looking statements contained in this presentation. Such risks and uncertainties include, among others, those discussed under the caption "Risk Factors" in our most recently filed Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission (the "SEC") on February 10, 2022 (our "2021 Form 10-K"), and in our consolidated financial statements, related notes, and the other information appearing elsewhere in the 2021 Form 10-K, our Quarterly Report on Form 10-Q filed with the SEC on April 26, 2022, and our other filings with the SEC. Given these risks and uncertainties, you should not place undue reliance on any forward-looking statements. The forward-looking statements contained in this presentation are made only as of the date of our most recent public filings, and we do not intend, and, except as required by law, we undertake no obligation to update any such forward-looking statement after the date it is made to reflect actual results or future events or circumstances.

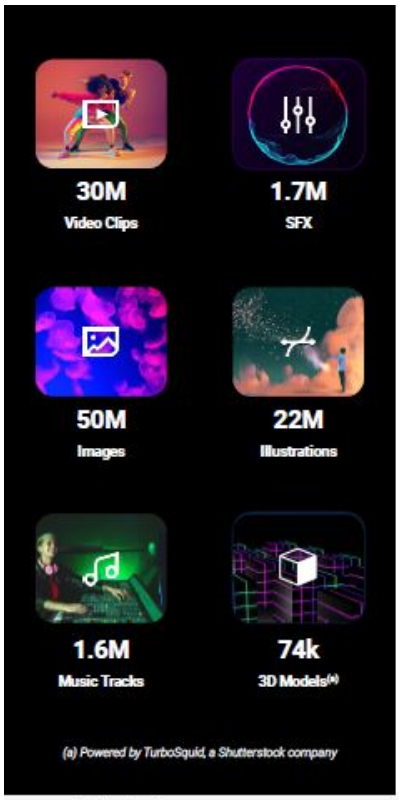
The information contained in this presentation does not constitute an offer to sell, or the solicitation of an offer to buy, any securities or the solicitation of any vote or approval. Any such offer or solicitation would be made only by means of a registration statement (including a prospectus) filed with the SEC, after such registration statement becomes effective.

Shutterstock Acquisition of Pond5

- Acquisition of the **largest video-first content marketplace**:
  - Brand of choice for filmmakers, media companies and marketers worldwide
  - Differentiated royalty-free and editorial content with >30 million licensable video clips
  - Large and growing blue-chip customer base
  - 100% acquisition for all cash consideration of $210 million
- **Growing and profitable business**:
  - Exposure to the faster growing video market
  - Increases video as a % of Shutterstock revenue to ~20%
  - Adjusted EBITDA margins similar to Shutterstock
- **Meets Shutterstock's investment criteria**:
  - Strong strategic fit
  - Meaningful synergies with Shutterstock
  - Complementary customer base
  - Further scales Shutterstock's video business
  - Expands Shutterstock's editorial offering with unique and high-quality content

Pond5:
Create Without Limits
(click on video)

4



Pond5 Overview

- **World's largest online marketplace for royalty-free video for the creative community:**
  - >30 million licensable video clips
  - 115,000+ contributors across the world
  - 15,000 new videos daily
  - 125,000 active customers, including rapidly growing social media platforms, VoD streaming services and production companies
- **Compelling value proposition for customers:**
  - Strong breadth and depth of content to meet customers' unique and diverse needs
  - Easy to use (pay-per-item transaction model; flexible licenses)
- **Premier content partners:**
  - Unique and exclusive content from editorial partners
  - Real time news and events coverage
  - Rare archival footage dating back to the 19th century
- **Delivering content through various channels:**
  - eCommerce a la carte pricing that involve no minimum commitments and no contracts
  - Enterprise-level subscriptions, fully customizable with tailored licensing and content options
  - Global distribution via 50+ API integrations
- **Seasoned management team, with offices in NYC, London, Dublin and Prague**

Pond5 Has Diverse Customer Base That Includes Top Global Brands

- Pond5 content can be found just about anywhere, including feature films, TV series, documentaries, ads and corporate presentations
- Customer relationships are highly complementary with Shutterstock, with minimal overlap

Illustrative Pond5 Customers

Pond5 Acquisition Allows Shutterstock to Further Benefit from Key Trends Driving Demand for Video Content

Original Content for Film & TV

Demand for Video Content is Surging, while Budgets and Timeframes are Tightening

$220 billion in global film & TV production spend annually

Average person in US spent **2.5 hours** per day watching digital video in 2021

Almost **2 billion people** will access subscription OTT services like Netflix, Disney+ and Amazon Prime Video in 2022

Digital Video Advertising

Video Ad Spend is Outgrowing the Broader Digital Ad Spend Market

$60 billion in US video ad spend in 2021 (45% YoY)

Tiktok and YouTube US ad revenues are projected to grow at **94% and 24% CAGR** respectively (2020 - 2024)

CTV ad spend increased **57%** in 2021 to $14 billion

Growth in Freelancer Economy & SMBs

Non-professionals are Empowered to Create Professional Quality Video Content

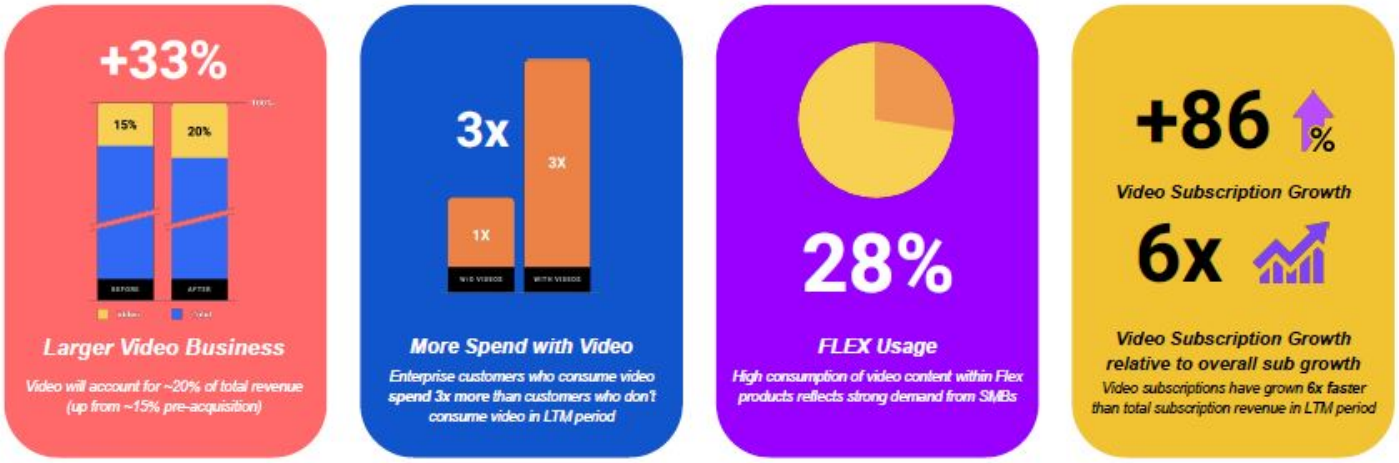
8 in 10 businesses anticipate selling products or services via social platforms by 2024

50 million amateur and professional video content creators in the Creator Economy

Pond5's larger concentration of creative enthusiasts will benefit from Shutterstock's creative editing and workflow offering (Create)

Sources: eMarketer, Visual Capitalist, SignalFire, Sprout Social

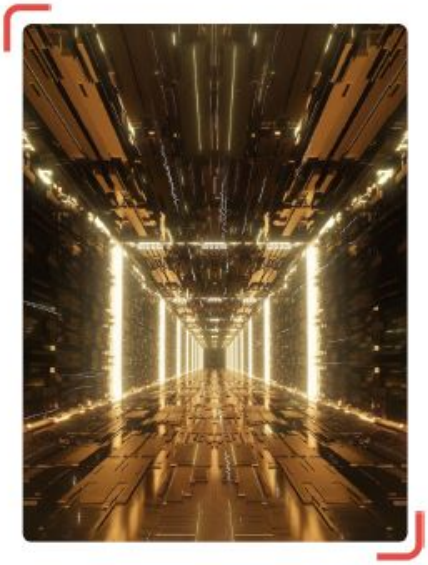
Pond5 Enables Shutterstock to Expand its Already Fast Growing Video Business



Pond5 Strengthens Shutterstock's Presence in Editorial

- Pond5 brings unique and high-quality content partnerships that will expand Shutterstock's editorial presence

Transaction Details and Financial Impact



Consideration & Financing

- Total purchase consideration of $210 million on a cash-free / debt-free basis
- Closing effective on May 11
- Entered into $100 million revolver concurrent with the acquisition to allow for further M&A and general corporate purposes
- Funded via existing cash on balance sheet and $50 million revolver draw

Financial Impact

- Maintaining 2022 revenue and adjusted EBITDA margin guidance
- Immediately accretive to 2022 adjusted EBITDA, even after one-time transaction related costs

Integration Plan

- Pond5 will remain a standalone brand focusing on video and music
- Content will be integrated across platforms
- Aggressive pursuit of Editorial business leveraging Shutterstock's sales team and Pond5's Editorial video capabilities

Aligned with Framework for Shareholder Value Creation

- Programmatic M&A in areas with strong strategic fit to expand our creative platform
- Acquire growing and profitable businesses

SHUTTERSTOCK APPOINTS PAUL HENNESSY CHIEF EXECUTIVE OFFICER

New York, NY, May 11, 2022 - Shutterstock, Inc. (NYSE: SSTK) ("the Company"), the leading global creative platform for transformative brands and media companies, today announced that Paul Hennessy has been named Chief Executive Officer, effective July 1, 2022. Mr. Hennessy, a Company Board member since 2015, succeeds Jon Oringer, Shutterstock's founder, who is currently serving as Interim Chief Executive Officer. Mr. Oringer will remain as Executive Chairman of the Board.

With more than 20 years of global leadership and digital marketplace experience, Mr. Hennessy will oversee a smooth transition to execute Shutterstock's strategy of building a world class platform that disrupts and transforms the creative industry.

"Having worked alongside Paul as a Board member for the past seven years, I know how capable he is of leading Shutterstock into its next chapter of growth and transformation," **said Jon Oringer, Founder and Executive Chairman of the Board at Shutterstock.** "Paul is a data-driven, growth-focused leader with a track record of success leading and scaling transformative businesses. With a focus towards disruption and innovation, Paul is highly respected inside and outside of the organization, and has demonstrated that he is a customer-centric, employee-centric leader who is committed to delivering value to both our customers and our shareholders. I am confident that this will be a seamless transition, and that as CEO Paul will harness the potential of Shutterstock's diversified offering. Speaking on behalf of the Board, we are looking forward to working closely with Paul as he leads the Company into this next phase."

"For the last seven years, I have been fortunate to have a front row seat to the disruption and innovation Shutterstock has achieved – from industry-leading proprietary technology to world class workflow applications – and I'm honored to be the next Chief Executive Officer," **said Mr. Hennessy.** "I believe the opportunities ahead are endless, and I'm committed to our strategy of building a full-service creative platform that delivers an exceptional experience for our customers at scale. I have a profound belief in Shutterstock's people, and I look forward to setting the vision, making the appropriate investments, and creating a culture that motivates and inspires both shareholder and customer value. Together with our talented senior leadership team, Jon and our Board, I am confident we will successfully herald Shutterstock into a new era."

Prior to joining Shutterstock as Chief Executive Officer, Mr. Hennessy, 57, served as Chief Executive Officer and member of the Board of Directors of Vroom, Inc., an online pre-owned car retailer. There, he led the Vroom Inc. IPO, strategic acquisitions, and built Vroom into a top 10 automotive retailer in the United States with over $3B in revenue in 2021. Previously, Mr. Hennessy successfully developed and led growth strategies for priceline.com, a provider of online travel and travel related reservation and search services, as the company's Chief Executive Officer.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact are forward-looking. Examples of forward-looking statements include, but are not limited to, statements regarding guidance, industry prospects, future business, future results of operations or financial condition, future dividends, our ability to consummate acquisitions and integrate the businesses we have acquired or may acquire into our existing operations, new or planned features, products or services, management strategies, our competitive position and the COVID-19 pandemic. You can identify forward-looking statements by words such as "may," "will," "would," "should," "could," "expect," "aim," "anticipate," "believe," "estimate," "intend," "plan," "predict," "project," "seek," "potential," "opportunities" and other similar expressions and the negatives of such expressions. However, not all forward-looking statements contain these words. Forward-looking statements are subject to known and unknown risks, uncertainties and other factors that could cause our actual results to differ materially from those expressed or implied by the forward-looking statements contained herein. Such risks and uncertainties include, among others, those discussed under the caption "Risk Factors" in our most recent Annual Report on Form 10-K, as well as in other documents that the Company may file from time to time with the Securities and Exchange Commission. As a result of such risks, uncertainties and factors, Shutterstock's actual results may differ materially from any future results, performance or achievements discussed in or implied by the forward-looking statements contained herein. The forward-looking statements contained in this press release are made only as of this date and Shutterstock assumes no obligation to update the information included in this press release or revise any forward-looking statements, whether as a result of new information, future developments or otherwise, except as required by law.

About Shutterstock, Inc.

Shutterstock, Inc. (NYSE: SSTK), is the leading global creative platform for transformative brands and media companies. Directly and through its group subsidiaries, Shutterstock's comprehensive collection includes high-quality licensed photographs, vectors, illustrations, 3D models, videos and music. Working with its growing community of over 2 million contributors, Shutterstock adds hundreds of thousands of images each week, and currently has more than 405 million images and more than 25 million video clips available.

Headquartered in New York City, Shutterstock has offices around the world and customers in more than 150 countries. The Company also owns Pond5, the world’s largest video marketplace, TurboSquid, the world’s largest 3D content marketplace, PicMonkey, a leading online graphic design and image editing platform; Offset, a high-end image collection; Shutterstock Studios, an end-to-end custom creative shop; PremiumBeat, a curated royalty-free music library; Shutterstock Editorial, a premier source of editorial images and videos for the world's media; Amper Music, an AI-driven music platform; and Bigstock, a value-oriented stock media offering.

For more information, please visit www.shutterstock.com and follow Shutterstock on Twitter and on Facebook.

Press Contact
Aimée Leabon
press@shutterstock.com
917-563-4991

Document and Entity Information	May 06, 2022
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Document Period End Date	May 06, 2022
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Entity Tax Identification Number	80-0812659
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Entity Address, State or Province	NY
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  ],
  "xbrltype": "securityTitleItemType"
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 "dei_SecurityExchangeName": {
  "auth_ref": [
   "r1"
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  "lang": {
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    "role": {
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     "label": "Security Exchange Name"
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  "presentation": [
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  },
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  "lang": {
   "en-us": {
    "role": {
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  "localname": "TradingSymbol",
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  "Section": "12",
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 "r1": {
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  "Number": "240",
  "Publisher": "SEC",
  "Section": "12",
  "Subsection": "d1-1"
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  "Publisher": "SEC",
  "Section": "13e",
  "Subsection": "4c"
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 "r3": {
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  "Publisher": "SEC",
  "Section": "14d",
  "Subsection": "2b"
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 "r4": {
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  "Publisher": "SEC",
  "Section": "12",
  "Subsection": "b-2"
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 "r6": {
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  "Section": "425"
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