

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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### FILER

#### NOVANTA INC

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SIC: **3690** Miscellaneous electrical machinery, equipment & supplies

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

**FORM 10-Q**

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

For the quarterly period ended October 1, 2021

Or

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

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

Commission File No.: 001-35083

**NOVANTA INC.**

(Exact name of registrant as specified in its charter)

**New Brunswick, Canada**  
(State or other jurisdiction of  
incorporation or organization)

**98-0110412**  
(I.R.S. Employer  
Identification No.)

**125 Middlesex Turnpike**  
**Bedford, Massachusetts, USA**  
(Address of principal executive offices)

**01730**  
(Zip Code)

Registrant's telephone number, including area code: (781) 266-5700

N/A

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common shares, no par value	NOVT	The Nasdaq Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES ☒ NO ☐

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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. ☐

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

As of October 27, 2021, there were 35,599,658 of the Registrant's common shares, no par value, issued and outstanding.

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**NOVANTA INC.**  
**TABLE OF CONTENTS**

<u>Item No.</u>		<u>Page No.</u>
	<u>PART I — FINANCIAL INFORMATION</u>	1
ITEM 1.	<u>FINANCIAL STATEMENTS</u>	1
	<u>CONSOLIDATED BALANCE SHEETS (unaudited)</u>	1
	<u>CONSOLIDATED STATEMENTS OF OPERATIONS (unaudited)</u>	2
	<u>CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (unaudited)</u>	3
	<u>CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (unaudited)</u>	4
	<u>CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)</u>	5
	<u>NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (unaudited)</u>	6
ITEM 2.	<u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	31
ITEM 3.	<u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	44
ITEM 4.	<u>CONTROLS AND PROCEDURES</u>	44
	<u>PART II — OTHER INFORMATION</u>	45
ITEM 1.	<u>LEGAL PROCEEDINGS</u>	45
ITEM 1A.	<u>RISK FACTORS</u>	45
ITEM 2.	<u>UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS</u>	45
ITEM 3.	<u>DEFAULTS UPON SENIOR SECURITIES</u>	45
ITEM 4.	<u>MINE SAFETY DISCLOSURES</u>	45
ITEM 5.	<u>OTHER INFORMATION</u>	45
ITEM 6.	<u>EXHIBITS</u>	46
	<u>SIGNATURES</u>	48

# PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements

### NOVANTA INC. CONSOLIDATED BALANCE SHEETS (In thousands of U.S. dollars or shares) (Unaudited)

	October 1, 2021	December 31, 2020
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 102,395	\$ 125,054
Accounts receivable, net of allowance of \$498 and \$274, respectively	112,080	75,054
Inventories	119,422	92,737
Prepaid income taxes and income taxes receivable	7,252	3,203
Prepaid expenses and other current assets	12,163	8,125
Total current assets	353,312	304,173
Property, plant and equipment, net	86,279	78,676
Operating lease assets	43,459	34,444
Deferred tax assets	411	10,491
Other assets	2,809	2,894
Intangible assets, net	231,027	148,521
Goodwill	492,940	285,980
Total assets	<u>\$ 1,210,237</u>	<u>\$ 865,179</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Current portion of long-term debt	\$ 5,207	\$ 5,508
Accounts payable	65,012	42,966
Income taxes payable	5,674	5,787
Current portion of operating lease liabilities	7,575	6,188
Accrued expenses and other current liabilities	104,506	53,780
Total current liabilities	187,974	114,229
Long-term debt	441,831	194,927
Operating lease liabilities	40,850	32,802
Deferred tax liabilities	21,936	24,134
Income taxes payable	5,789	5,112
Other liabilities	11,744	17,166
Total liabilities	710,124	388,370
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred shares, no par value; Authorized shares: 7,000; No shares issued and outstanding	—	—
Common shares, no par value; Authorized shares: unlimited; Issued and outstanding: 35,600 and 35,163, respectively	423,856	423,856
Additional paid-in capital	48,489	58,992
Retained earnings	42,779	6,202
Accumulated other comprehensive loss	(15,011)	(12,241)
Total stockholders' equity	500,113	476,809
Total liabilities and stockholders' equity	<u>\$ 1,210,237</u>	<u>\$ 865,179</u>

The accompanying notes are an integral part of these consolidated financial statements.

**NOVANTA INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands of U.S. dollars or shares, except per share amounts)  
(Unaudited)

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Revenue	\$ 177,726	\$ 142,929	\$ 507,833	\$ 443,125
Cost of revenue	101,428	83,824	290,389	260,873
Gross profit	76,298	59,105	217,444	182,252
Operating expenses:				
Research and development and engineering	17,468	15,231	53,104	45,005
Selling, general and administrative	31,296	26,788	94,189	82,451
Amortization of purchased intangible assets	4,139	3,533	11,300	10,388
Restructuring, acquisition and related costs	8,120	1,687	16,485	5,591
Total operating expenses	61,023	47,239	175,078	143,435
Operating income	15,275	11,866	42,366	38,817
Interest income (expense), net	(1,710)	(1,698)	(4,496)	(5,077)
Foreign exchange transaction gains (losses), net	34	(136)	(299)	(164)
Other income (expense), net	(71)	(14)	(238)	47
Income before income taxes	13,528	10,018	37,333	33,623
Income tax provision (benefit)	(75)	1,760	756	1,758
Consolidated net income	<u>\$ 13,603</u>	<u>\$ 8,258</u>	<u>\$ 36,577</u>	<u>\$ 31,865</u>
Earnings per common share (Note 5):				
Basic	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
Diluted	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89
Weighted average common shares outstanding—basic	35,447	35,142	35,366	35,144
Weighted average common shares outstanding—diluted	35,764	35,688	35,771	35,609

The accompanying notes are an integral part of these consolidated financial statements.

**NOVANTA INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
(In thousands of U.S. dollars)  
(Unaudited)

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Consolidated net income	\$ 13,603	\$ 8,258	\$ 36,577	\$ 31,865
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of tax (1)	(3,248)	4,302	(3,602)	(1,006)
Pension liability adjustments, net of tax (2)	448	(68)	832	769
Total other comprehensive income (loss)	(2,800)	4,234	(2,770)	(237)
Total consolidated comprehensive income	<u>\$ 10,803</u>	<u>\$ 12,492</u>	<u>\$ 33,807</u>	<u>\$ 31,628</u>

- (1) The tax effect on this component of comprehensive income (loss) was nominal for all periods presented.
- (2) The tax effect on this component of comprehensive income (loss) was nominal for all periods presented. See Note 4 for the total amount of pension liability adjustments reclassified out of accumulated other comprehensive income (loss).

The accompanying notes are an integral part of these consolidated financial statements.



**NOVANTA INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands of U.S. dollars or shares)  
(Unaudited)

	Common Shares		Additional Paid-In	Retained	Accumulated Other Comprehensive	
	# of Shares	Amount	Capital	Earning (Deficit)	Loss	Total
<b>Three Months Ended October 1, 2021</b>						
<b>Balance at July 2, 2021</b>	35,489	\$ 423,856	\$ 52,243	\$ 29,176	\$ (12,211)	\$ 493,064
Consolidated net income	—	—	—	13,603	—	13,603
Common shares issued under stock plans	199	—	—	—	—	—
Common shares withheld for taxes on vested stock awards	(88)	—	(12,244)	—	—	(12,244)
Share-based compensation	—	—	8,490	—	—	8,490
Other comprehensive income (loss), net of tax	—	—	—	—	(2,800)	(2,800)
<b>Balance at October 1, 2021</b>	<u>35,600</u>	<u>\$ 423,856</u>	<u>\$ 48,489</u>	<u>\$ 42,779</u>	<u>\$ (15,011)</u>	<u>\$ 500,113</u>
<b>Nine Months Ended October 1, 2021</b>						
<b>Balance at December 31, 2020</b>	35,163	\$ 423,856	\$ 58,992	\$ 6,202	\$ (12,241)	\$ 476,809
Consolidated net income	—	—	—	36,577	—	36,577
Common shares issued under stock plans	658	—	—	—	—	—
Common shares withheld for taxes on vested stock awards	(221)	—	(30,672)	—	—	(30,672)
Share-based compensation	—	—	20,169	—	—	20,169
Other comprehensive income (loss), net of tax	—	—	—	—	(2,770)	(2,770)
<b>Balance at October 1, 2021</b>	<u>35,600</u>	<u>\$ 423,856</u>	<u>\$ 48,489</u>	<u>\$ 42,779</u>	<u>\$ (15,011)</u>	<u>\$ 500,113</u>
<b>Three Months Ended October 2, 2020</b>						
<b>Balance at July 3, 2020</b>	35,155	\$ 423,856	\$ 45,338	\$ (14,712)	\$ (22,584)	\$ 431,898
Consolidated net income	—	—	—	8,258	—	8,258
Common shares issued under stock plans	8	—	—	—	—	—
Common shares withheld for taxes on vested stock awards	(3)	—	(366)	—	—	(366)
Share-based compensation	—	—	7,225	—	—	7,225
Other comprehensive income (loss), net of tax	—	—	—	—	4,234	4,234
<b>Balance at October 2, 2020</b>	<u>35,160</u>	<u>\$ 423,856</u>	<u>\$ 52,197</u>	<u>\$ (6,454)</u>	<u>\$ (18,350)</u>	<u>\$ 451,249</u>
<b>Nine Months Ended October 2, 2020</b>						
<b>Balance at December 31, 2019</b>	35,052	\$ 423,856	\$ 49,748	\$ (38,319)	\$ (18,113)	\$ 417,172
Consolidated net income	—	—	—	31,865	—	31,865
Common shares issued under stock plans	264	—	179	—	—	179
Common shares withheld for taxes on vested stock awards	(91)	—	(8,302)	—	—	(8,302)
Repurchases of common shares	(65)	—	(5,500)	—	—	(5,500)
Share-based compensation	—	—	16,072	—	—	16,072
Other comprehensive income (loss), net of tax	—	—	—	—	(237)	(237)
<b>Balance at October 2, 2020</b>	<u>35,160</u>	<u>\$ 423,856</u>	<u>\$ 52,197</u>	<u>\$ (6,454)</u>	<u>\$ (18,350)</u>	<u>\$ 451,249</u>

The accompanying notes are an integral part of these consolidated financial statements.

**NOVANTA INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands of U.S. dollars)  
(Unaudited)

	Nine Months Ended	
	October 1, 2021	October 2, 2020
<b>Cash flows from operating activities:</b>		
Consolidated net income	\$ 36,577	\$ 31,865
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Depreciation and amortization	30,613	28,363
Provision for inventory excess and obsolescence	3,187	3,550
Share-based compensation	20,169	16,072
Deferred income taxes	(3,064)	(3,455)
Inventory acquisition fair value adjustments	280	188
Other	934	427
Changes in assets and liabilities which (used)/provided cash, excluding effects from business acquisitions:		
Accounts receivable	(21,458)	9,655
Inventories	(11,943)	11,937
Prepaid income taxes, income taxes receivable, prepaid expenses and other current assets	(7,043)	5,741
Accounts payable, income taxes payable, accrued expenses and other current liabilities	19,511	(13,134)
Other non-current assets and liabilities	(1,851)	2,477
Cash provided by operating activities	65,912	93,686
<b>Cash flows from investing activities:</b>		
Acquisition of businesses, net of cash acquired and working capital adjustments	(285,181)	—
Purchases of property, plant and equipment	(14,759)	(7,164)
Payment of contingent consideration related to acquisition of technology assets	(2,200)	(2,632)
Cash used in investing activities	(302,140)	(9,796)
<b>Cash flows from financing activities:</b>		
Borrowings under revolving credit facilities	280,000	—
Repayments under term loan and revolving credit facilities	(24,036)	(34,017)
Payments of debt issuance costs	—	(1,614)
Payments of withholding taxes from share-based awards	(30,672)	(8,302)
Repurchases of common shares	—	(5,500)
Payment of contingent consideration related to acquisitions	(1,836)	(1,135)
Purchase of building under finance lease	(8,743)	—
Payments of deferred and escrowed purchase price related to acquisitions	—	(5,772)
Other financing activities	(423)	(855)
Cash provided by (used in) financing activities	214,290	(57,195)
Effect of exchange rates on cash and cash equivalents	(721)	991
Increase (decrease) in cash and cash equivalents	(22,659)	27,686
Cash and cash equivalents, beginning of the period	125,054	78,944
Cash and cash equivalents, end of the period	\$ 102,395	\$ 106,630
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 3,679	\$ 4,099
Cash paid for income taxes	\$ 9,231	\$ 4,350
Income tax refunds received	\$ 1,201	\$ 4,613

The accompanying notes are an integral part of these consolidated financial statements.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

**1. Basis of Presentation**

Novanta Inc. and its subsidiaries (collectively referred to as “Novanta”, the “Company”, “we”, “us”, “our”) is a leading global supplier of core technology solutions that give medical and advanced industrial original equipment manufacturers (“OEMs”) a competitive advantage. Novanta combines deep proprietary technology expertise and competencies in photonics, vision and precision motion with a proven ability to solve complex technical challenges. This enables Novanta to engineer core components and sub-systems that deliver extreme precision and performance, tailored to the customers’ demanding applications.

The accompanying unaudited interim consolidated financial statements have been prepared by the Company in United States (“U.S.”) dollars and pursuant to the rules and regulations of the United States Securities and Exchange Commission (“SEC”), the instructions to Form 10-Q and the provisions of Regulation S-X pertaining to interim financial statements. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the U.S. have been condensed or omitted. The interim consolidated financial statements and notes included in this report should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. In the opinion of management, these interim consolidated financial statements include all adjustments and accruals of a normal and recurring nature necessary to fairly state the results of the interim periods presented. The results for interim periods are not necessarily indicative of results to be expected for the full year or for any future periods.

The Company’s unaudited interim consolidated financial statements are prepared for each quarterly period ending on the Friday closest to the end of the calendar quarter, with the exception of the fourth quarter which always ends on December 31.

***Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Estimates and assumptions are reviewed on an on-going basis and the effects of revisions are reflected in the period in which such revisions are deemed to be necessary. The Company evaluates its estimates based on historical experience, current conditions, including estimated economic implications of the COVID-19 pandemic, and various other assumptions that it believes are reasonable under the circumstances. The accounting estimates assessed included, but were not limited to, the Company’s allowance for doubtful accounts and credit losses, inventory and related reserves and the carrying value of goodwill and other long-lived assets. While there was not a material change to the consolidated financial statements related to these estimates as of and for the nine months ended October 1, 2021, the Company’s future assessment of the magnitude and duration of the COVID-19 pandemic, as well as other factors, could result in material impacts to the Company’s consolidated financial statements in future reporting periods.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Recent Accounting Pronouncements***

The following table provides a brief description of recent Accounting Standards Updates (“ASU”) issued by the Financial Accounting Standards Board (“FASB”):

<b>Standard</b>	<b>Description</b>	<b>Effective Date</b>	<b>Effect on the Financial Statements or Other Significant Matters</b>
In December 2019, the FASB issued ASU 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes.”	ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to the general principles of Accounting Standards Codification (“ASC”) 740, “Income Taxes”, including: (i) the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items; (ii) the exception to the requirement to recognize a deferred tax liability for equity method investments when a foreign subsidiary becomes an equity method investment (or vice-versa); and (iii) the exception for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. ASU 2019-12 also simplifies GAAP for other areas of ASC 740 by clarifying and amending the existing guidance.	January 1, 2021. Early adoption is permitted.	The Company adopted ASU 2019-12 during the first quarter of 2021. The adoption of ASU 2019-12 did not have a material impact on the Company’s consolidated financial statements.
In March 2020, the FASB issued ASU 2020-04, “Reference rate reform (Topic 848): Facilitation of the effects of reference rate reform on financial reporting.”	ASU 2020-04 provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met.	Upon issuance. ASU 2020-04 is elective.	The Company does not expect the impact of ASU 2020-04 to be material to its consolidated financial statements.
In October 2021, the FASB issued ASU 2021-08, “Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers.”	ASU 2021-08 requires that entities recognize and measure contract assets and liabilities acquired in a business combination in accordance with ASC 606, “Revenue from Contracts with Customers”. ASU 2021-08 also applies to contract assets or liabilities from other contracts to which the provisions of ASC 606 apply. The amendments in ASU 2021-08 do not affect the accounting for other assets or liabilities that may arise from revenue contracts with customers in accordance with ASC 606, such as refund liabilities, or in a business combination, such as customer-related intangible assets and contract-based intangible assets.	January 1, 2023. Early adoption is permitted.	The Company is evaluating the impact of the adoption of ASU 2021-08 on its consolidated financial statements.



**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

## **2. Revenue**

The Company recognizes revenue when control of promised goods or services is transferred to customers. The transfer of control generally occurs upon shipment when title and risk of loss pass to the customer. The vast majority of the Company's revenue is generated from the sale of distinct products. Revenue is measured as the amount of consideration the Company expects to receive in exchange for such products, which is generally at contractually stated prices. Sales taxes and value added taxes collected concurrently with revenue generating activities are excluded from revenue.

### ***Performance Obligations***

Substantially all of the Company's revenue is recognized at a point in time, upon shipment, rather than over time.

At the request of its customers, the Company may perform professional services, generally for the maintenance and repair of products previously sold to those customers and for engineering services. Professional services for the maintenance and repair of products are typically short in duration, mostly less than one month, and generally involve a single distinct performance obligation. The related revenue is recognized at a point in time when control transfers to the customer upon completion of professional services. The consideration expected to be received in exchange for such services is typically the contractually stated amount. Certain engineering services are longer in duration and the related revenue is recognized over time, as the Company has a right to consideration from a customer, based on the corresponding value to the customer from the Company's performance completed to date. Engineering services aggregate to less than 3% of the Company's consolidated revenue.

The Company occasionally sells separately priced non-standard/extended warranty services or preventative maintenance plans with the sale of products. The transfer of control over the service plans is over time. The Company recognizes the related revenue ratably over the terms of the service plans. The transaction price of a contract is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are generally determined based on the prices charged to customers or using the expected cost plus a margin.

### ***Shipping & Handling Costs***

The Company accounts for shipping and handling activities that occur after the transfer of control over the related goods as fulfillment activities rather than performance obligations. The shipping and handling fees charged to customers are recognized as revenue and the related costs are recorded in cost of revenue at the time of transfer of control.

### ***Warranties***

The Company generally provides warranties for its products. The standard warranty period is typically 12 months to 24 months for the Photonics and Precision Motion segments and 12 months to 36 months for the Vision segment. The standard warranty period for product sales is accounted for under the provisions of ASC 450, "Contingencies," as the Company has the ability to ascertain the likelihood of the liability and can reasonably estimate the amount of the liability. A provision for the estimated cost related to warranty is recorded as cost of revenue at the time revenue is recognized. The Company's estimate of costs to service the warranty obligations is based on historical experience and expectations of future conditions. To the extent that the Company's experience in warranty claims or costs associated with servicing those claims differ from the original estimates, revisions to the estimated warranty liability are recorded at that time, with an offsetting adjustment to cost of revenue.

### ***Practical Expedients and Exemptions***

The Company expenses incremental direct costs of obtaining a contract when incurred if the expected amortization period is one year or less. These costs are recorded within selling, general and administrative expenses in the consolidated statement of operations.

The Company does not adjust the promised amount of consideration for the effects of a financing component because the transfer of a promised good to a customer and the customer's payment for that good are typically one year or less. The Company does not disclose the value of the remaining performance obligation for contracts with an original expected length of one year or less.





**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Contract Liabilities***

Contract liabilities consist of deferred revenue and advance payments from customers, including amounts that are refundable. These contract liabilities are classified as either current or long-term liabilities in the consolidated balance sheet based on the timing of when the Company expects to recognize the related revenue. As of October 1, 2021 and December 31, 2020, contract liabilities were \$9.5 million and \$6.5 million, respectively, and are included in accrued expenses and other current liabilities and other liabilities in the accompanying consolidated balance sheets. The increase in the contract liability balance during the nine months ended October 1, 2021 is primarily due to cash payments received in advance of satisfying performance obligations and acquired contract liabilities of \$2.0 million from current year acquisitions, partially offset by \$4.9 million of revenue recognized during the period that was included in the contract liability balance at December 31, 2020.

***Disaggregated Revenue***

See Note 16 for the Company's disaggregation of revenue by segment, geography and end market.

**3. Business Combinations**

On August 30, 2021, the Company acquired 100% of the outstanding shares of ATI Industrial Automation, Inc. ("ATI"), an Apex, North Carolina-based leading supplier of intelligent end-of-arm technology solutions to OEMs for advanced industrial and surgical robots for an initial cash purchase price of \$170.0 million, net of cash acquired, and \$51.9 million estimated fair value of contingent consideration. The contingent consideration will be payable in 2022 based on a multiple of actual standalone ATI Adjusted EBITDA, as defined in the purchase and sale agreement, for the fiscal year ending December 31, 2021. The initial cash purchase price was financed with borrowings under the Company's revolving credit facility and cash available on hand. The addition of ATI is expected to complement and add intelligent technology solutions to further expand the Company's position in mission critical robotic applications. ATI will contribute to the Company's operations and growth within the Precision Motion reportable segment.

On August 31, 2021, the Company acquired 100% of the outstanding shares of Schneider Electric Motion USA, Inc. ("SEM"), a Marlborough, Connecticut-based manufacturer of integrated stepper motors and electronic controls for automation equipment for a total purchase price of \$115.1 million, net of cash acquired, subject to customary working capital adjustments. The acquisition was financed with borrowings under our revolving credit facility. The addition of SEM is expected to complement and expand the Company's presence in life science applications and solutions for industrial automation applications within the Precision Motion reportable segment.

***Allocation of Purchase Price***

The acquisitions of ATI and SEM have been accounted for as business combinations. The purchase price for each acquisition is allocated based upon a valuation of the fair values of assets acquired and liabilities assumed as of the acquisition date. The fair values of intangible assets were based on valuations using a discounted cash flow income approach and a relief from royalty income approach, with estimates and assumptions developed by management. The process for estimating the fair values of identifiable intangible assets requires the use of significant estimates and assumptions, including estimating future cash flows and developing appropriate discount rates. The excess of the purchase price over the fair values of tangible assets, identifiable intangible assets and assumed liabilities was recorded as goodwill for each acquisition. The Company's estimates and assumptions in determining the estimated fair values of certain assets and liabilities are subject to change within the measurement period (up to one year from the acquisition date) as a result of additional information obtained with regards to facts and circumstances that existed as of the acquisition date.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

**ATI**

Based upon a preliminary valuation, the total purchase price for ATI was allocated as follows (in thousands):

	<b>Purchase Price Allocation</b>
Cash	\$ 10,709
Accounts receivable	12,596
Inventories	17,431
Property, plant and equipment	4,195
Intangible assets	52,400
Goodwill	143,851
Deferred tax assets	345
Other assets	11,425
<b>Total assets acquired</b>	<b>252,952</b>
Accounts payable	5,135
Deferred tax liabilities	228
Other liabilities	14,938
<b>Total liabilities assumed</b>	<b>20,301</b>
<b>Total assets acquired, net of liabilities assumed</b>	<b>232,651</b>
Less: cash acquired	10,709
Less: contingent consideration	51,900
<b>Initial purchase price, net of cash acquired</b>	<b>\$ 170,042</b>

The purchase price allocation is preliminary as the Company is in the process of collecting additional information for the valuation of inventories, property plant and equipment, intangible assets, other liabilities, contingent consideration and unrecognized tax benefits.

The fair value of intangible assets for ATI is comprised of the following (dollar amounts in thousands):

	<b>Estimated Fair Value</b>	<b>Weighted Average Amortization Period</b>
Developed technologies	\$ 19,800	15 years
Customer relationships	23,600	15 years
Trademarks and trade names	5,600	15 years
Backlog	3,400	1 year
<b>Total</b>	<b>\$ 52,400</b>	

The purchase price allocation resulted in \$52.4 million of identifiable intangible assets and \$143.9 million of goodwill. Goodwill amounting to \$143.4 million is expected to be deductible for U.S. income tax purposes. Intangible assets are being amortized over their weighted average useful lives primarily based upon the pattern in which anticipated economic benefits from such assets are expected to be realized. The goodwill recorded represents the anticipated incremental value of future cash flows potentially attributable to: (i) ATI's ability to grow the business with existing and new customers, including leveraging the Company's customer base; (ii) ATI's ability to grow the business through new product introductions; and (iii) cost improvements due to the integration of ATI's operations into the Company's existing infrastructure.

The operating results of ATI were included in the Company's results of operations beginning on August 31, 2021. ATI contributed revenues of \$8.7 million and a profit before income taxes of \$0.8 million to the Company's operating results for the nine months ended October 1, 2021. ATI's profit before income taxes for the period from the acquisition date through October 1, 2021 included amortization of inventory fair value adjustments and amortization of purchased intangible assets of \$0.8 million.



**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

**SEM**

Based upon a preliminary valuation, the total purchase price for SEM was allocated as follows (in thousands):

	Purchase Price Allocation
Cash	\$ 3,881
Accounts receivable	4,240
Inventories	2,499
Property, plant and equipment	452
Intangible assets	54,570
Goodwill	70,064
Other assets	776
Total assets acquired	136,482
Accounts payable	1,325
Deferred tax liabilities	12,387
Other liabilities	3,750
Total liabilities assumed	17,462
Total assets acquired, net of liabilities assumed	119,020
Less: cash acquired	3,881
Total purchase price, net of cash acquired	\$ 115,139

The purchase price allocation is preliminary as the Company is in the process of collecting additional information for the valuation of inventories, intangible assets, other liabilities and unrecognized tax benefits.

The fair value of intangible assets for SEM is comprised of the following (dollar amounts in thousands):

	Estimated Fair Value	Weighted Average Amortization Period
Developed technologies	\$ 9,110	15 years
Customer relationships	41,740	20 years
Trademarks and trade names	370	4 years
Backlog	3,350	1 year
Total	\$ 54,570	

The purchase price allocation resulted in \$54.6 million of identifiable intangible assets and \$70.1 million of goodwill. As the SEM acquisition was structured as a stock acquisition for income tax purposes, the goodwill is not expected to be deductible for income tax purposes. Intangible assets are being amortized over their weighted average useful lives primarily based upon the pattern in which anticipated economic benefits from such assets are expected to be realized. The goodwill recorded represents the anticipated incremental value of future cash flows potentially attributable to: (i) SEM's ability to grow the business with existing and new customers, including leveraging the Company's customer base; (ii) SEM's ability to grow the business through new product introductions; and (iii) cost improvements due to the integration of SEM's operations into the Company's existing infrastructure.

The operating results of SEM were included in the Company's results of operations beginning on September 1, 2021. SEM contributed revenues of \$2.4 million and a profit before income taxes of \$0.1 million to the Company's operating results for the nine months ended October 1, 2021. SEM's profit before income taxes for the period from the acquisition date through October 1, 2021 included amortization of inventory fair value adjustments and amortization of purchased intangible assets of \$0.5 million.

**Unaudited Pro Forma Information**

The pro forma information for all periods presented below includes the effects of business combination accounting resulting from the acquisitions of ATI and SEM, including amortization of inventory fair value adjustments, amortization of intangible assets, interest expense on borrowings in connection with the acquisition, and the related tax effects, assuming that the acquisitions had been

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

consummated as of January 1, 2020. The pro forma financial information is presented for comparative purposes only and is not necessarily indicative of the results of operations that actually would have been achieved if the acquisitions had taken place on January 1, 2020.

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Revenue	\$ 197,715	\$ 186,919	\$ 584,051	\$ 508,906
Consolidated net income	\$ 13,995	\$ 9,908	\$ 38,188	\$ 25,551

***Acquisition Costs***

Acquisition costs are included in restructuring and acquisition related costs in the consolidated statements of operations. Acquisition-related costs for ATI and SEM acquisitions are as follows (in thousands):

	<b>Three Months Ended</b>	<b>Nine Months Ended</b>
	<b>October 1, 2021</b>	<b>October 1, 2021</b>
ATI	\$ 1,956	\$ 3,321
SEM	\$ 864	\$ 1,052

**4. Accumulated Other Comprehensive Loss**

Changes in accumulated other comprehensive loss was as follows (in thousands):

	<b>Total Accumulated Other Comprehensive Loss</b>	<b>Cumulative Translation Adjustments</b>	<b>Pension Liability Adjustments</b>
Balance at December 31, 2020	\$ (12,241)	\$ (2,296)	\$ (9,945)
Other comprehensive income (loss)	(3,487)	(3,602)	115
Amounts reclassified from accumulated other comprehensive loss	717	—	717
Balance at October 1, 2021	<u>\$ (15,011)</u>	<u>\$ (5,898)</u>	<u>\$ (9,113)</u>

The amounts reclassified from accumulated other comprehensive loss were included in other income (expense) in the consolidated statements of operations.

**5. Earnings per Common Share**

Basic earnings per common share is computed by dividing consolidated net income by the weighted average number of common shares outstanding during the period.

For diluted earnings per common share, the denominator includes the dilutive effect of outstanding common share equivalents. For the three and nine months ended October 1, 2021 and October 2, 2020, respectively, weighted average shares outstanding for the diluted earnings per common share included the dilutive effect of outstanding restricted stock units, stock options, and total shareholder return performance-based restricted stock units, determined using the treasury stock method. The dilutive effects of market-based contingently issuable shares are included in the weighted average common share calculation based on the number of shares, if any, that would be issuable as of the end of the reporting period, assuming the end of the reporting period is also the end of the performance period. Dilutive effects of attainment-based contingently issuable shares granted to the former Laser Quantum Limited (“Laser Quantum”) noncontrolling interest shareholders, non-GAAP EPS performance-based restricted stock units and operating cash flow performance-based restricted stock units are included in the weighted average common share calculation when the performance targets have been achieved based on the cumulative achievement against the performance targets as of the end of each reporting period.





**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

The following table sets forth the computation of basic and diluted earnings per common share (amounts in thousands, except per share data):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Numerators:</b>				
Consolidated net income	<u>\$ 13,603</u>	<u>\$ 8,258</u>	<u>\$ 36,577</u>	<u>\$ 31,865</u>
<b>Denominators:</b>				
Weighted average common shares outstanding— basic	35,447	35,142	35,366	35,144
Dilutive potential common shares	317	546	405	465
Weighted average common shares outstanding— diluted	<u>35,764</u>	<u>35,688</u>	<u>35,771</u>	<u>35,609</u>
Antidilutive potential common shares excluded from above	1	—	18	17
<b>Earnings per Common Share:</b>				
Basic	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
Diluted	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89

For both the three and nine months ended October 1, 2021, 45 thousand non-GAAP EPS performance-based restricted stock units and 37 thousand operating cash flow performance-based restricted stock units granted to certain members of the executive management team, and 213 thousand shares of restricted stock issued to the former Laser Quantum non-controlling interest shareholders are considered contingently issuable shares and were excluded from the calculation of the denominator as the contingent conditions had not been met as of October 1, 2021.

For both the three and nine months ended October 2, 2020, 73 thousand non-GAAP EPS performance-based restricted stock units granted to certain members of the executive management team and 213 thousand shares of restricted stock issued to the former Laser Quantum non-controlling interest shareholders were considered contingently issuable shares and were excluded from the calculation of the denominator as the contingent conditions had not been met as of October 2, 2020.

## 6. Fair Value Measurements

ASC 820, “Fair Value Measurements,” establishes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the third is considered unobservable:

- Level 1: Quoted prices for identical assets or liabilities in active markets which the Company can access
- Level 2: Observable inputs other than those described in Level 1
- Level 3: Unobservable inputs

### *Current Assets and Liabilities*

The Company’s cash equivalents are highly liquid investments with original maturities of three months or less, which represent an asset the Company measures at fair value on a recurring basis. The Company determines the fair value of cash equivalents using a market approach based on quoted prices in active markets. The fair values of cash, accounts receivable, income taxes receivable, accounts payable, income taxes payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature.

### *Foreign Currency Contracts*

The Company addresses market risks from changes in foreign currency exchange rates through a risk management program that includes the use of derivative financial instruments to mitigate certain balance sheet foreign currency transaction exposures. The Company uses foreign currency forward contracts as a part of its strategy to manage exposures related to foreign currency denominated

monetary assets and liabilities. The fair value of these foreign currency forward contracts is reported either in other current assets or in other current liabilities as of the end of the period.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Contingent Considerations***

On August 30, 2021, the Company acquired ATI. Under the purchase and sale agreement for the ATI acquisition, the former shareholders of ATI are eligible to receive contingent consideration based on ATI's fiscal year 2021 Adjusted EBITDA, as defined in the purchase and sale agreement. The contingent consideration will be payable in 2022. The preliminary fair value of the contingent consideration of \$51.9 million was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Once the fair value of contingent consideration is finalized, subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. There have been no changes in the fair value of the contingent consideration since the date of the acquisition.

On July 31, 2019, the Company acquired ARGES GmbH ("ARGES"). Under the purchase and sale agreement for the ARGES acquisition, the former owner of ARGES is eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from August 2019 through December 2026. The undiscounted range of possible contingent consideration is zero to €10.0 million (\$11.1 million). If the revenue targets are achieved, the contingent consideration would be payable annually with the first payment due in the first quarter of 2021. The estimated fair value of the contingent consideration of €7.1 million (\$7.9 million) was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. During 2020, the fair value of the contingent consideration was adjusted to €4.1 million (\$5.1 million). In March 2021, the Company made the first installment payment of €0.4 million (\$0.4 million), which is included in cash flows from financing activities in the consolidated statement of cash flows for the nine months ended October 1, 2021. Based on the revenue performance and revenue projections as of October 1, 2021, the fair value of the contingent consideration was adjusted to €3.7 million (\$4.3 million). There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

On April 16, 2019, the Company acquired Ingenia CAT, S.L. ("Ingenia"). Under the purchase and sale agreement for the Ingenia acquisition, the shareholders of Ingenia are eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from April 2019 through March 2022. The undiscounted range of possible contingent consideration is zero to €8.0 million (\$9.0 million). If the revenue targets are achieved, the contingent consideration would be payable in cash in three annual installments from 2020 to 2022. The estimated fair value of the contingent consideration of €5.8 million (\$6.6 million) was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. Based on the revenue performance and revenue projections for fiscal years 2021 and 2022 as of December 31, 2020, the fair value of the contingent consideration was adjusted to €2.3 million (\$2.9 million). Based on the revenue performance and revenue projections as of April 2, 2021, the fair value of the contingent consideration was adjusted to €2.4 million (\$2.9 million). The Company made the first installment payment of €1.0 million (\$1.1 million) in May 2020 and the second installment payment of €1.2 million (\$1.4 million) in May 2021. These installment payments are reported as cash flows from financing activities in the consolidated statement of cash flows for the respective periods. There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

On December 14, 2016, the Company acquired certain video signal processing and management technologies used in medical visualization solutions. Under the purchase and sale agreement, the former owners are eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from 2018 to 2021 from products utilizing the acquired technologies. The undiscounted range of possible contingent consideration is zero to €5.5 million (\$6.6 million). If the revenue targets are achieved, the contingent consideration would be payable in cash in four installments from 2019 to 2022. As the acquired assets did not meet the definition of a business, the fair value of the contingent consideration is recognized when probable and estimable and is capitalized as part of the cost of the acquired assets. Subsequent changes in the estimated fair value of this contingent liability are recorded as adjustments to the carrying value of the assets acquired and amortized over the remaining useful life of the underlying assets. The Company made the first installment payment of €2.4 million (\$2.6 million) in February 2020 and the second installment payment of €1.8 million (\$2.2 million) in February 2021. These installment payments are reported as cash flows from investing activities in the consolidated statement of cash flows for the respective periods. There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

**Summary by Fair Value Hierarchy**

The following table summarizes the fair values of the Company's assets and liabilities measured at fair value on a recurring basis as of October 1, 2021 (in thousands):

	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash equivalents	\$ 3,089	\$ 3,089	\$ —	\$ —
Prepaid expenses and other current assets:				
Foreign currency forward contracts	202	—	202	—
	<u>\$ 3,291</u>	<u>\$ 3,089</u>	<u>\$ 202</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and other current liabilities:				
Contingent considerations - Current	\$ 55,469	\$ —	\$ —	\$ 55,469
Foreign currency forward contracts	10	—	10	—
Other liabilities:				
Contingent considerations - Long-term	3,605	—	—	3,605
	<u>\$ 59,084</u>	<u>\$ —</u>	<u>\$ 10</u>	<u>\$ 59,074</u>

The following table summarizes the fair values of the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2020 (in thousands):

	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash equivalents	\$ 11,047	\$ 11,047	\$ —	\$ —
Prepaid expenses and other current assets:				
Foreign currency forward contracts	27	—	27	—
	<u>\$ 11,074</u>	<u>\$ 11,047</u>	<u>\$ 27</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and other current liabilities:				
Contingent considerations - Current	\$ 4,280	\$ —	\$ —	\$ 4,280
Foreign currency forward contracts	—	—	—	—
Other liabilities:				
Contingent considerations - Long-term	7,276	—	—	7,276
	<u>\$ 11,556</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 11,556</u>

Changes in the fair value of Level 3 contingent considerations during the nine months ended October 1, 2021 were as follows (in thousands):

	Contingent Considerations
Balance at December 31, 2020	\$ 11,556

Acquisition of ATI	51,900
Payments	(4,036)
Fair value adjustments	26
Effect of foreign exchange rates	(372)
Balance at October 1, 2021	<u>\$ 59,074</u>

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

The following table provides qualitative information associated with the fair value measurement of the Company's Level 3 liabilities:

<u>Liability</u>	<u>October 1, 2021 Fair Value (in thousands)</u>	<u>Valuation Technique</u>	<u>Unobservable Inputs</u>	<u>Percentage Applied</u>
Contingent consideration (ATI)	\$51,900	Monte Carlo method	Historical and projected adjusted  EBITDA for fiscal year 2021 EBITDA risk premium EBITDA volatility Credit spread	N/A  7.2% 27.0% 2.1%
Contingent consideration (ARGES)	\$4,282	Monte Carlo method	Historical and projected revenues from August 2019 through December 2026 Revenue volatility Cost of debt Discount rate	N/A 21.0% 2.6% 3.7%
Contingent consideration (Ingenia)	\$1,493	Monte Carlo method	Historical and projected revenues from April 2019 through March 2022 Revenue volatility Cost of debt Discount rate	N/A 38.5% 3.1% 9.6%
Contingent consideration (Other)	\$1,399	Discounted cash flow method	Historical and projected revenues for fiscal years 2018 to 2021 Revenue discount rate	N/A 22.8%

Increases or decreases in the unobservable inputs noted above would result in a higher or lower fair value measurement.

See Note 10 to Consolidated Financial Statements for a discussion of the estimated fair value of the Company's outstanding debt.

## 7. Foreign Currency Contracts

The Company addresses market risks from changes in foreign currency exchange rates through a risk management program that includes the use of derivative financial instruments to mitigate certain foreign currency transaction exposures from future settlement of non-functional currency monetary assets and liabilities as of the end of a period. The Company does not enter into derivative transactions for speculative purposes. Gains and losses on derivative financial instruments substantially offset losses and gains on the underlying hedged exposures. Furthermore, the Company manages its exposures to counterparty risks on derivative instruments by entering into contracts with a diversified group of major financial institutions and by actively monitoring outstanding positions.

As of October 1, 2021, the aggregate notional amount and fair value of the Company's foreign currency forward contracts was \$48.3 million and a net gain of \$0.2 million, respectively. As of December 31, 2020, the aggregate notional amount and fair value of the Company's foreign currency forward contracts was \$28.5 million and a net gain of less than \$0.1 million, respectively.

The Company recognized an aggregate net gain of \$0.3 million and \$0.9 million for the three and nine months ended October 1, 2021, respectively, and an aggregate net gain of \$1.0 million and \$1.4 million for the three and nine months ended October 2, 2020,

respectively. These amounts were included in foreign exchange transaction gains (losses) in the consolidated statement of operations for all periods presented.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

**8. Goodwill and Intangible Assets**

***Goodwill***

Goodwill is recorded when the consideration for a business combination exceeds the fair value of net tangible and identifiable intangible assets acquired. The Company tests its goodwill balances for impairment annually as of the beginning of the second quarter or more frequently if indicators are present or changes in circumstances suggest that an impairment may exist. The Company performed the most recent annual goodwill and indefinite-lived intangible asset impairment test as of the beginning of the second quarter of 2021 and noted no impairment.

The following table summarizes changes in goodwill during the nine months ended October 1, 2021 (in thousands):

Balance at beginning of the period	\$ 285,980
Goodwill acquired from acquisitions	213,915
Effect of foreign exchange rate changes	(6,955)
Balance at end of the period	<u>\$ 492,940</u>

Goodwill by reportable segment as of October 1, 2021 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 215,453	\$ 161,885	\$ 266,831	\$ 644,169
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 112,992</u>	<u>\$ 130,163</u>	<u>\$ 249,785</u>	<u>\$ 492,940</u>

Goodwill by reportable segment as of December 31, 2020 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 218,517	\$ 165,195	\$ 53,497	\$ 437,209
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 116,056</u>	<u>\$ 133,473</u>	<u>\$ 36,451</u>	<u>\$ 285,980</u>

***Intangible Assets***

Intangible assets as of October 1, 2021 and December 31, 2020, respectively, are summarized as follows (in thousands):

	October 1, 2021			December 31, 2020		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortizable intangible assets:						
Patents and developed technologies	\$ 190,485	\$ (118,535)	\$ 71,950	\$ 164,430	\$ (110,572)	\$ 53,858
Customer relationships	229,369	(101,546)	127,823	167,429	(92,892)	74,537
Customer backlog	6,753	(563)	6,190	—	—	—
Trademarks and trade names	24,052	(12,015)	12,037	18,367	(11,268)	7,099
Amortizable intangible assets	<u>450,659</u>	<u>(232,659)</u>	<u>218,000</u>	<u>350,226</u>	<u>(214,732)</u>	<u>135,494</u>
Non-amortizable intangible assets:						
Trade names	13,027	—	13,027	13,027	—	13,027
Totals	<u>\$ 463,686</u>	<u>\$ (232,659)</u>	<u>\$ 231,027</u>	<u>\$ 363,253</u>	<u>\$ (214,732)</u>	<u>\$ 148,521</u>



All definite-lived intangible assets are amortized either on a straight-line basis or an economic benefit basis over their remaining estimated useful life. Amortization expense for patents and developed technologies is included in cost of revenue in the accompanying consolidated statements of operations. Amortization expense for customer relationships and definite-lived trademarks,

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

trade names and other intangibles is included in operating expenses in the accompanying consolidated statements of operations. Amortization expense was as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Amortization expense – cost of revenue	\$ 3,316	\$ 2,820	\$ 9,275	\$ 8,270
Amortization expense – operating expenses	4,139	3,533	11,300	10,388
Total amortization expense	<u>\$ 7,455</u>	<u>\$ 6,353</u>	<u>\$ 20,575</u>	<u>\$ 18,658</u>

Estimated amortization expense for each of the five succeeding years and thereafter as of October 1, 2021 was as follows (in thousands):

Year Ending December 31,	Cost of Revenue	Operating Expenses	Total
2021 (remainder of year)	\$ 4,029	\$ 5,294	\$ 9,323
2022	13,854	27,032	40,886
2023	12,544	20,998	33,542
2024	10,170	17,631	27,801
2025	8,579	14,917	23,496
Thereafter	22,774	60,178	82,952
Total	<u>\$ 71,950</u>	<u>\$ 146,050</u>	<u>\$ 218,000</u>

## 9. Supplementary Balance Sheet Information

The following tables provide the details of selected balance sheet items as of the periods indicated (in thousands):

### *Inventories*

	October 1, 2021	December 31, 2020
Raw materials	\$ 75,445	\$ 55,657
Work-in-process	21,409	15,487
Finished goods	20,781	20,234
Demo and consigned inventory	1,787	1,359
Total inventories	<u>\$ 119,422</u>	<u>\$ 92,737</u>

### *Accrued Expenses and Other Current Liabilities*

	October 1, 2021	December 31, 2020
Accrued compensation and benefits	\$ 20,546	\$ 12,510
Accrued warranty	4,527	4,919
Contract liabilities, current portion	9,190	6,173
Finance lease obligations	590	9,720
Accrued earn-out and contingent considerations	55,469	10,796
Other	14,184	9,662
Total	<u>\$ 104,506</u>	<u>\$ 53,780</u>

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Accrued Warranty***

	Nine Months Ended	
	October 1, 2021	October 2, 2020
Balance at beginning of the period	\$ 4,919	\$ 5,756
Provision charged to cost of revenue	1,215	1,255
Warranty liabilities acquired from acquisitions	541	—
Use of provision	(2,075)	(1,941)
Foreign currency exchange rate changes	(73)	32
Balance at end of the period	<u>\$ 4,527</u>	<u>\$ 5,102</u>

***Other Long Term Liabilities***

	October 1, 2021	December 31, 2020
Finance lease obligations	\$ 5,461	\$ 5,908
Accrued pension liabilities	326	1,511
Accrued contingent considerations	3,605	7,276
Other	2,352	2,471
Total	<u>\$ 11,744</u>	<u>\$ 17,166</u>

**10. Debt**

Debt consisted of the following (in thousands):

	October 1, 2021	December 31, 2020
Senior Credit Facilities – term loan	\$ 5,238	\$ 5,545
Less: unamortized debt issuance costs	(31)	(37)
Total current portion of long-term debt	<u>\$ 5,207</u>	<u>\$ 5,508</u>
Senior Credit Facilities – term loan	\$ 90,092	\$ 99,534
Senior Credit Facilities – revolving credit facility	355,288	99,761
Less: unamortized debt issuance costs	(3,549)	(4,368)
Total long-term debt	<u>\$ 441,831</u>	<u>\$ 194,927</u>
Total Senior Credit Facilities	<u>\$ 447,038</u>	<u>\$ 200,435</u>

***Senior Credit Facilities***

On December 31, 2019, the Company entered into an amended and restated credit agreement (the “Third Amended and Restated Credit Agreement”) with existing lenders for an aggregate credit facility of \$450.0 million, consisting of a \$100.0 million U.S. dollar equivalent euro-denominated (approximately €90.2 million) 5-year term loan facility and a \$350.0 million 5-year revolving credit facility (collectively, the “Senior Credit Facilities”). The Senior Credit Facilities mature in December 2024 and includes an uncommitted “accordion” feature pursuant to which the commitments under the revolving credit facility may be increased by an additional \$200.0 million in aggregate, subject to certain customary conditions.

On March 27, 2020, the Company entered into an amendment (the “First Amendment”) to the Third Amended and Restated Credit Agreement and exercised a portion of the uncommitted accordion feature. The First Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$145.0 million, from \$350.0 million to \$495.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

The outstanding principal balance under the term loan facility is payable in quarterly installments of €1.1 million beginning in March 2020, with the remaining balance due upon maturity. The Company may make additional principal payments at any time, which will reduce the next quarterly installment payment due. Borrowings under the revolving credit facility may be repaid at any time through December 2024. The Company made principal payments of €3.4 million (\$4.0 million) towards its term loan and \$20.0 million towards its revolving credit facility during the nine months ended October 1, 2021.

The Company is required to satisfy certain financial and non-financial covenants under the Third Amended and Restated Credit Agreement. The Third Amended and Restated Credit Agreement also contains customary events of default. The Company was in compliance with these covenants as of October 1, 2021.

***Liens***

The Company's obligations under the Senior Credit Facilities are secured, on a senior basis, by a lien on substantially all of the assets of Novanta Inc.

***Fair Value of Debt***

As of October 1, 2021 and December 31, 2020, the outstanding balance of the Company's debt approximated its fair value based on current rates available to the Company for debt of similar maturities. The fair value of the Company's debt is classified as Level 2 under the fair value hierarchy.

**11. Leases**

Most leases held by the Company expire between 2021 and 2034. In the U.K., where longer lease terms are more common, the Company has a land lease that extends through 2078. Certain leases include one or more options to renew, with renewal terms that can extend the lease term from one to 10 years, and options to terminate the leases within one year. The exercise of lease renewal or termination options is at the Company's sole discretion; therefore, the majority of renewals to extend the lease terms are not included in the Company's right-of-use assets and operating lease liabilities as they are not reasonably certain of being exercised. The Company regularly evaluates the renewal options and includes the renewal periods in the lease term when they are reasonably certain of being exercised. The depreciable lives of the right-of-use assets and leasehold improvements are limited to the expected lease terms.

The following table summarizes the components of lease costs (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Operating lease cost	\$ 2,418	\$ 1,786	\$ 6,213	\$ 5,693
Finance lease cost				
Amortization of right-of-use assets	149	253	451	748
Interest on lease liabilities	85	108	257	326
Variable lease cost	275	320	834	1,043
Total lease cost	<u>\$ 2,927</u>	<u>\$ 2,467</u>	<u>\$ 7,755</u>	<u>\$ 7,810</u>

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

The following table provides additional details of balance sheet information related to the Company's leases (in thousands, except lease term and discount rate):

	October 1, 2021	December 31, 2020
<b>Operating leases</b>		
Operating lease right-of-use assets	\$ 43,459	\$ 34,444
Current portion of operating lease liabilities	\$ 7,575	\$ 6,188
Operating lease liabilities	40,850	32,802
Total operating lease liabilities	\$ 48,425	\$ 38,990
<b>Finance leases</b>		
Property, plant and equipment, gross	\$ 9,582	\$ 19,819
Accumulated depreciation	(4,918)	(4,934)
Finance lease assets included in property, plant and equipment, net	\$ 4,664	\$ 14,885
Accrued expenses and other current liabilities	\$ 590	\$ 9,720
Other liabilities	5,461	5,908
Total finance lease liabilities	\$ 6,051	\$ 15,628
<b>Weighted-average remaining lease term (in years):</b>		
Operating leases	8.4	9.3
Finance leases	7.8	3.5
<b>Weighted-average discount rate:</b>		
Operating leases	4.96%	5.50%
Finance leases	5.54%	3.00%

The following table provides additional details of cash flow information related to the Company's leases (in thousands):

	Nine Months Ended	
	October 1, 2021	October 2, 2020
<b>Cash paid for amounts included in lease liabilities:</b>		
Operating cash flows from finance leases	\$ 257	\$ 357
Operating cash flows from operating leases	\$ 5,562	\$ 5,088
Financing cash flows from finance leases	\$ 9,166	\$ 1,034
<b>Supplemental non-cash information:</b>		
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 15,340	\$ 3,050

During the nine months ended October 1, 2021, the Company paid \$8.7 million upon the exercise of an option to purchase a building under a finance lease agreement in Germany. The cash payment is presented as a cash outflow from financing activities in the consolidated statement of cash flows.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

Future minimum lease payments under operating and finance leases expiring subsequent to October 1, 2021, including operating leases associated with facilities that have been vacated as a result of the Company's restructuring actions, are summarized as follows (in thousands):

Year Ending December 31,	Operating Leases	Finance Leases
2021 (remainder of year)	\$ 2,141	\$ 227
2022	9,539	907
2023	8,241	930
2024	7,230	954
2025	6,967	954
Thereafter	27,090	3,486
Total minimum lease payments	61,208	7,458
Less: Interest	(12,783)	(1,407)
Present value of lease liabilities	\$ 48,425	\$ 6,051

## 12. Preferred and Common Shares and Share-Based Compensation

### *Preferred Shares*

In May 2021, the Company's shareholders approved a special resolution to amend the Company's articles to authorize up to 7.0 million preferred shares for future issuance. The Company's Board of Directors is authorized to designate and issue one or more series of preferred shares, fix the rights, preferences and designation, as deemed necessary or advisable, relating to the preferred shares, provided that no shares of any series may be entitled to more than one vote per share. As of October 1, 2021, no preferred shares had been issued and outstanding.

### *Common Share Repurchases*

In October 2018, the Company's Board of Directors approved a share repurchase plan (the "2018 Repurchase Plan"), authorizing the repurchase of \$25.0 million worth of the Company's common shares. In February 2020, the Company's Board of Directors approved a new share repurchase plan (the "2020 Repurchase Plan"), authorizing the repurchase of an additional \$50.0 million worth of the Company's common shares. As of October 1, 2021, the Company had \$59.5 million available for future share repurchases under these share repurchase plans.

### *Share-Based Compensation Expense*

The table below summarizes share-based compensation expense recorded in the consolidated statements of operations (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Selling, general and administrative	\$ 4,360	\$ 4,265	\$ 13,123	\$ 10,225
Research and development and engineering	534	1,150	1,776	2,204
Cost of revenue	631	1,589	2,305	3,185
Restructuring, acquisition, and related costs	2,965	221	2,965	458
Total share-based compensation expense	\$ 8,490	\$ 7,225	\$ 20,169	\$ 16,072

Share-based compensation expense reported in selling, general and administrative expenses included expenses related to restricted stock units and deferred stock units granted to the members of the Company's Board of Directors of \$1.1 million and \$1.0 million during the nine months ended October 1, 2021 and October 2, 2020, respectively.

On May 13, 2021, the Company's shareholders approved the Amended and Restated 2010 Incentive Award Plan, which increased the number of shares authorized for issuance under the plan from 4,398,613 shares to 6,148,613 shares, extended the term of the plan through May 13, 2031, and included certain provisions that reflect good corporate governance practices.



**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Restricted Stock Units and Deferred Stock Units***

The Company's restricted stock units ("RSUs") have generally been issued with vesting periods ranging from zero to five years and vest based solely on service conditions. Accordingly, the Company recognizes compensation expense on a straight-line basis over the requisite service period. The Company reduces the compensation expense by an estimated forfeiture rate which is based on anticipated forfeitures and historical forfeiture experience.

Deferred stock units ("DSUs") are granted to the members of the Company's Board of Directors. Compensation expense associated with the DSUs is recognized in full on the date of grant, as the DSUs are fully vested and non-forfeitable upon grant. There were 91 thousand and 162 thousand DSUs outstanding as of October 1, 2021 and December 31, 2020, respectively. Outstanding DSUs are included in the calculation of weighted average basic shares outstanding for the respective periods.

The table below summarizes activities relating to RSUs and DSUs issued and outstanding under the Company's Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	Shares (In thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	625	\$ 58.79
Granted	169	\$ 136.85
Vested	(485)	\$ 51.21
Forfeited	(20)	\$ 103.20
Unvested at October 1, 2021	289	\$ 113.94
Expected to vest as of October 1, 2021	272	

The total fair value of RSUs and DSUs that vested during the nine months ended October 1, 2021 was \$68.0 million based on the market price of the underlying shares on the date of vesting.

***Performance Stock Units***

The Company typically grants two types of annual performance-based stock awards to certain members of the executive management team: non-GAAP EPS performance-based restricted stock units ("EPS-PSUs") and relative total shareholder return performance-based restricted stock units ("TSR-PSUs"). Both types of performance-based restricted stock units generally cliff vest on the first day following the end of the three-year performance period.

The number of common shares to be issued upon settlement following vesting of the EPS-PSUs is determined based on the Company's cumulative non-GAAP EPS over a three-year performance period against the performance targets established by the Company's Board of Directors at the time of grant and will be in the range of zero to 200% of the target number of shares. The Company recognizes compensation expense ratably over the performance period based on the number of shares that are deemed probable of vesting at the end of the three-year performance cycle. This probability assessment is performed quarterly and the cumulative effect of a change in the estimated compensation expense, if any, is recognized in the consolidated statement of operations in the period in which such determination is made.

The number of common shares to be issued upon settlement following vesting of the TSR-PSUs is determined based on the relative market performance of the Company's common shares compared to the Russell 2000 Index over a three-year performance period using a payout formula established by the Company's Board of Directors at the time of grant and will be in the range of zero to 200% of the target number of shares. The Company recognizes the related compensation expense based on the fair value of the TSR-PSUs, determined using the Monte Carlo valuation method as of the grant date, on a straight-line basis from the grant date to the end of the three-year performance period. Compensation expense will not be affected by the number of TSR-PSUs that will actually vest at the end of the three-year performance period.

In February 2021, the Company granted operating cash flow performance-based restricted stock units ("OCF-PSUs") to certain members of the executive management team. Upon completion of the requisite service periods, the OCF-PSUs will vest in two tranches

if the Company achieves the cumulative operating cash flow performance target for fiscal years 2021 through 2023 as approved by the Company's Compensation Committee as of the date of grant. The first fifty percent of the OCF-PSU grant will vest at the end of the four-year service period from the date of grant and the remaining fifty percent of the OCF-PSU grant will vest at the

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

end of the five-year service period from the date of grant. The Company recognizes compensation expense ratably over the requisite service period based on the expectation that 100 percent of the OCF-PSUs are deemed probable of vesting. This probability assessment is performed quarterly and the cumulative effect of a change in the estimated compensation expense, if any, is recognized in the consolidated statement of operations in the period in which such determination is made.

The table below summarizes the activities relating to the performance-based awards issued and outstanding under the Company's Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	Shares (In thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	142	\$ 88.99
Granted	67	\$ 150.89
Performance adjustment	28	\$ 67.72
Vested	(75)	\$ 64.25
Forfeited	—	\$ —
Unvested at October 1, 2021	162	\$ 122.26
Expected to vest as of October 1, 2021	177	

The unvested PSUs are shown at target in the table above. As of October 1, 2021, the maximum number of common shares to be earned under these PSU grants was approximately 286 thousand shares.

The performance adjustment shares and vested shares shown in the table above are for performance-based awards granted on February 22, 2018. These awards vested at 160% of target number of common shares during the nine months ended October 1, 2021 based on the achievement of cumulative Non-GAAP EPS and applicable relative TSR performance conditions during the performance period of fiscal years 2018 through 2020.

The total fair value of PSUs that vested during the nine months ended October 1, 2021 was \$9.3 million based on the market price of the underlying common shares on the date of vesting.

The fair value of the TSR-PSUs at the date of grant was estimated using the Monte Carlo valuation method with the following assumptions:

	Nine Months Ended October 1, 2021
Grant-date stock price	\$ 138.23
Expected volatility	42.44%
Risk-free interest rate	0.22%
Expected annual dividend yield	—
Fair value	\$ 166.64

### ***Stock Options***

No stock options were granted during the nine months ended October 1, 2021. There were 60 thousand fully-vested stock options outstanding as of October 1, 2021.

### **13. Income Taxes**

The Company determines its estimated annual effective tax rate at the end of each interim period based on full-year forecasted pre-tax income and facts known at that time. The estimated annual effective tax rate is applied to the year-to-date pre-tax income at the end of each interim period with the cumulative effect of any changes in the estimated annual effective tax rate being recorded in the fiscal quarter in which the changes are determined. The tax effect of significant unusual items is reflected in the period in which they

occur. Since the Company is incorporated in Canada, it is required to use Canada's statutory tax rate of 29.0% in the determination of the estimated annual effective tax rate.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

The Company maintains a valuation allowance on balances of certain U.S. state net operating losses and certain non-U.S. tax attributes that the Company has determined are more likely than not to be realized. A valuation allowance is required when, based upon an assessment of various factors, including recent operating loss history, anticipated future earnings, and prudent and reasonable tax planning strategies, it is more likely than not that some portion of the deferred tax assets will not be realized. In conjunction with the Company's ongoing review of its actual results and anticipated future earnings, the Company continuously reassesses the possibility of adding a new or additional valuation allowance or releasing the valuation allowance currently in place on its deferred tax assets.

The Company's effective tax rate of (0.6%) for the three months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, and windfall tax benefits upon vesting of certain share-based compensation awards, partially offset by an increase in valuation allowances.

The Company's effective tax rate of 2.0% for the nine months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, a release of uncertain tax position reserves, and windfall tax benefits upon vesting of certain share-based compensation awards, partially offset by the revaluation of long term deferred tax balances resulting from the U.K. corporate tax rate change and an increase in valuation allowances during the period. For the nine months ended October 1, 2021, the windfall tax benefits upon vesting of certain share-based compensation awards had a benefit of 14.5% on the Company's effective tax rate.

The Company's effective tax rate of 17.6% for the three months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions and other tax credits.

The Company's effective tax rate of 5.2% for the nine months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, windfall tax benefits upon vesting of certain share-based compensation awards during the period, and a release of a portion of the valuation allowance on the deferred tax assets in Canada. For the nine months ended October 2, 2020, the windfall tax benefits upon vesting of certain share-based compensation awards and the valuation allowance release had a benefit of 7.9% and 3.3%, respectively, on the Company's effective tax rate.

#### **14. Restructuring, Acquisition, and Related Costs**

The following table summarizes restructuring, acquisition, and related costs in the accompanying consolidated statements of operations (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
2020 restructuring	\$ 5,185	\$ 1,006	\$ 7,688	\$ 1,006
2019 restructuring	—	68	208	667
2018 restructuring	—	—	—	754
Total restructuring charges	\$ 5,185	\$ 1,074	\$ 7,896	\$ 2,427
Acquisition and related charges	2,935	613	8,589	3,164
Total restructuring, acquisition, and related costs	<u>\$ 8,120</u>	<u>\$ 1,687</u>	<u>\$ 16,485</u>	<u>\$ 5,591</u>

#### **2020 Restructuring**

As a result of the Company's ongoing evaluations and efforts to reduce its operating costs, while improving efficiency and effectiveness, the Company initiated the 2020 restructuring program in the third quarter of 2020. This program is focused on reducing operating complexity in the Company, including reducing infrastructure costs and streamlining the Company's operating model to better serve its customers. In addition, the program will be focused on cost reduction actions that improve gross margins for the overall

company. During the three and nine months ended October 1, 2021, the Company recorded \$5.2 million and \$7.7 million, respectively, in severance and other costs in connection with the 2020 restructuring program. As of October 1, 2021, the Company

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

had incurred cumulative costs related to this restructuring plan totaling \$10.4 million. The Company anticipates substantially completing the 2020 restructuring program in the second quarter of 2022 and expects to incur additional restructuring charges of \$3.0 million to \$4.0 million related to the 2020 restructuring program.

The following table summarizes restructuring costs associated with the 2020 restructuring program by reportable segment (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Photonics	\$ 2,349	\$ —	\$ 2,839	\$ —
Vision	193	1,006	890	1,006
Precision Motion	2,643	—	3,959	—
Unallocated Corporate and Shared Services	—	—	—	—
Total	<u>\$ 5,185</u>	<u>\$ 1,006</u>	<u>\$ 7,688</u>	<u>\$ 1,006</u>

### ***2019 Restructuring***

During the fourth quarter of 2018, the Company implemented a restructuring plan intended to realign operations, reduce costs, achieve operational efficiencies and focus resources on growth initiatives (the “2019 restructuring plan”). During the three and nine months ended October 1, 2021, the Company incurred zero and \$0.2 million, respectively, in severance and related costs in connection with the 2019 restructuring plan. As of October 2, 2021, the Company incurred cumulative costs related to this restructuring plan totaling \$9.0 million. The 2019 restructuring program was completed in the first quarter of 2021.

### ***Rollforward of Accrued Expenses Related to Restructuring***

The following table summarizes the accrual activities, by component, related to the Company’s restructuring plans recorded in the accompanying consolidated balance sheets (in thousands):

	Total	Severance	Facility	Other
Balance at December 31, 2020	\$ 1,800	\$ 1,681	\$ 116	\$ 3
Restructuring charges	7,896	6,292	1,183	421
Cash payments	(2,333)	(1,837)	(215)	(281)
Non-cash charges and other adjustments (1)	(3,486)	(2,981)	(505)	—
Balance at October 1, 2021	<u>\$ 3,877</u>	<u>\$ 3,155</u>	<u>\$ 579</u>	<u>\$ 143</u>

(1) Non-cash charges included stock compensation charges amounting to \$3.0 million associated with severance agreements for certain employees.

### ***Acquisition and Related Charges***

Acquisition costs in connection with business combinations, including finders’ fees, legal, valuation, and other professional or consulting fees, totaled \$2.9 million and \$4.7 million for the three and nine months ended October 1, 2021, respectively, and less than \$0.1 million and \$0.1 million for the three and nine months ended October 2, 2020, respectively. The Company incurred \$0.1 million and \$1.9 million for the three and nine months ended October 1, 2021, respectively, and \$0.4 million and \$1.0 million for the three and nine months ended October 2, 2020, respectively, in legal costs related to a dispute involving a company that was acquired in 2019. Acquisition and related costs recognized under earn-out agreements in connection with acquisitions totaled less than (\$0.1) million and \$1.9 million for the three and nine months ended October 1, 2021, respectively, and \$0.2 million and \$2.0 million for the three and nine months ended October 2, 2020, respectively. The majority of acquisition and related costs for the three months ended October 1, 2021 were included in the Company’s Unallocated Corporate and Shared Services reportable segment. The majority of acquisition and related costs for the nine months ended October 1, 2021 were included in the Company’s Precision Motion, Vision and Unallocated Corporate and Shared Services reportable segments. The majority of acquisition and related costs for the three and nine months ended October 2, 2020 were included in the Company’s Precision Motion and Vision reportable segments.





**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

## **15. Commitments and Contingencies**

### ***Purchase Commitments***

Excluding ATI's purchase commitments, there have been no material changes to the Company's purchase commitments since December 31, 2020. As of October 1, 2021, ATI had noncancellable commitments of \$17.9 million, primarily related to inventory purchases. The majority of these purchase commitments are expected to be incurred within the next twelve months.

### ***Legal Contingencies***

In April 2020, the Company received notification of an arbitration demand filed with the American Arbitration Association against a business acquired by the Company in June 2019. The arbitration demand was filed by a contract counterparty to a joint product development agreement entered into by the business before Novanta acquired it. The arbitration demand alleged breach of contract and other claims arising out of allegations that the business failed to engage in required marketing activities for the product developed under the joint product development agreement. The claimant sought compensatory and punitive damages, lost profits and other relief. During the second quarter of 2021, the arbitrator formally closed the arbitration pursuant to a settlement between the parties. No financial damages payments were made by the Company.

The Company is subject to various legal proceedings and claims that arise in the ordinary course of business. The Company reviews the status of each significant matter and assesses the potential financial exposure on a quarterly basis. If the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated, the Company accrues a liability for the estimated loss. Significant judgment is required in both the determination of probability and the determination as to whether an exposure is reasonably estimable. Because of uncertainties related to these matters, accruals are based only on the best information available as of the date of the consolidated balance sheet. As additional information becomes available, the Company reassesses the potential liability related to any pending claims and litigations and may revise its estimates. When a material loss contingency is reasonably possible but not probable, the Company does not record a liability, but instead discloses the nature and the amount of the claim, and an estimate of the potential loss or a range of potential losses, if such an estimate can be made. Legal fees are expensed as incurred. The Company does not believe that the outcome of these claims will have a material adverse effect on its consolidated financial statements but there can be no assurance that any such claims, or any similar claims, would not have a material adverse effect on the consolidated financial statements.

### ***Guarantees and Indemnifications***

In the normal course of its operations, the Company executes agreements that provide for indemnification and guarantees to counterparties in transactions such as business dispositions, sale of assets, sale of products and operating leases. Additionally, the by-laws of the Company require it to indemnify certain current or former directors, officers, and employees of the Company against expenses incurred by them in connection with each proceeding in which they are involved as a result of serving or having served in certain capacities. Indemnification is not available with respect to a proceeding as to which it has been adjudicated that the person did not act in good faith in the reasonable belief that the action was in the best interests of the Company. Certain of the Company's officers and directors are also a party to indemnification agreements with the Company. These indemnification agreements provide, among other things, that the director and officer shall be indemnified to the fullest extent permitted by applicable law against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such officer or director in connection with any proceeding by reason of his or her relationship with the Company. In addition, the indemnification agreements provide for the advancement of expenses incurred by such director or officer in connection with any proceeding covered by the indemnification agreement, subject to the conditions set forth therein and to the extent such advancement is not prohibited by law. The indemnification agreements also set out the procedures for determining entitlement to indemnification, the requirements relating to notice and defense of claims for which indemnification is sought, the procedures for enforcement of indemnification rights, the limitations on and exclusions from indemnification, and the minimum levels of directors' and officers' liability insurance to be maintained by the Company.

## **16. Segment Information**

### ***Reportable Segments***

The Company's Chief Operating Decision Maker ("CODM") utilizes financial information to make decisions about allocating resources and assessing performance for the entire Company. The Company evaluates the performance of and allocates resources to

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

its segments based on revenue, gross profit and operating profit. The Company's reportable segments have been identified based on commonality and adjacency of technologies, applications and customers amongst the Company's individual product lines. The Company determined that disclosing revenue by specific product was impracticable due to the highly customized and extensive portfolio of technologies offered to customers.

Based upon the information provided to the CODM, the Company has determined that it operates in three reportable segments: Photonics, Vision, and Precision Motion. The reportable segments and their principal activities consist of the following:

*Photonics*

The Photonics segment designs, manufactures and markets photonics-based solutions, including laser scanning, laser beam delivery, CO2 laser, solid state laser, ultrafast laser, and optical light engine products to customers worldwide. The segment serves highly demanding photonics-based applications for advanced industrial processes, metrology, medical and life science imaging, DNA sequencing, and medical laser procedures. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

*Vision*

The Vision segment designs, manufactures and markets a range of medical grade technologies, including medical insufflators, pumps and related disposables; visualization solutions; wireless, recorder and video integration technologies for operating room integrations; optical data collection and machine vision technologies; radio frequency identification ("RFID") technologies; thermal chart recorders; spectrometry technologies; and embedded touch screen solutions. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

*Precision Motion*

The Precision Motion segment designs, manufactures and markets optical and inductive encoders, precision motor and motion control sub-assemblies, servo drives, intelligent robotic end-of-arm technology solutions, air bearings, and air bearing spindles to customers worldwide. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

**Reportable Segment Financial Information**

Revenue, gross profit, gross profit margin, operating income (loss), and depreciation and amortization expenses by reportable segment were as follows (in thousands, except percentage data):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Revenue</b>				
Photonics	\$ 55,263	\$ 46,394	\$ 176,113	\$ 149,337
Vision	65,346	64,299	196,429	198,047
Precision Motion	57,117	32,236	135,291	95,741
<b>Total</b>	<b>\$ 177,726</b>	<b>\$ 142,929</b>	<b>\$ 507,833</b>	<b>\$ 443,125</b>
	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Gross Profit</b>				
Photonics	\$ 25,311	\$ 20,166	\$ 83,014	\$ 65,725
Vision	24,763	24,586	76,132	75,676
Precision Motion	27,743	15,011	64,694	42,753
Unallocated Corporate and Shared Services	(1,519)	(658)	(6,396)	(1,902)
<b>Total</b>	<b>\$ 76,298</b>	<b>\$ 59,105</b>	<b>\$ 217,444</b>	<b>\$ 182,252</b>



**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Gross Profit Margin</b>				
Photonics	45.8%	43.5%	47.1%	44.0%
Vision	37.9%	38.2%	38.8%	38.2%
Precision Motion	48.6%	46.6%	47.8%	44.7%
<b>Total</b>	<b>42.9%</b>	<b>41.4%</b>	<b>42.8%</b>	<b>41.1%</b>

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Operating Income (Loss)</b>				
Photonics	\$ 9,294	\$ 7,026	\$ 35,885	\$ 22,878
Vision	5,606	3,799	12,178	14,098
Precision Motion	14,957	7,675	34,681	20,728
Unallocated Corporate and Shared Services	(14,582)	(6,634)	(40,378)	(18,887)
<b>Total</b>	<b>\$ 15,275</b>	<b>\$ 11,866</b>	<b>\$ 42,366</b>	<b>\$ 38,817</b>

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Depreciation and Amortization Expenses</b>				
Photonics	\$ 2,901	\$ 2,864	\$ 8,703	\$ 8,303
Vision	5,239	5,296	15,793	15,845
Precision Motion	2,691	1,369	5,916	4,055
Unallocated Corporate and Shared Services	59	67	201	160
<b>Total</b>	<b>\$ 10,890</b>	<b>\$ 9,596</b>	<b>\$ 30,613</b>	<b>\$ 28,363</b>

**Revenue by Geography**

The Company aggregates geographic revenue based on the customer locations where products are shipped to. Revenue by geography was as follows (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
United States	\$ 72,972	\$ 57,635	\$ 191,699	\$ 171,364
Germany	25,313	18,885	71,448	64,266
Rest of Europe	34,163	30,483	105,338	94,281
China	22,230	17,409	68,286	50,285
Rest of Asia-Pacific	21,256	16,414	64,765	55,956
Other	1,792	2,103	6,297	6,973
<b>Total</b>	<b>\$ 177,726</b>	<b>\$ 142,929</b>	<b>\$ 507,833</b>	<b>\$ 443,125</b>

The majority of revenue from our Photonics, Vision and Precision Motion segments is generated from sales to customers within the United States and Europe. Each segment also generates revenue across the other geographies, with no significant concentration of any segment's remaining revenue.

**NOVANTA INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**AS OF OCTOBER 1, 2021**  
**(Unaudited)**

***Revenue by End Market***

The Company primarily operates in two end markets: the medical market and advanced industrial market. Revenue by end market was approximately as follows:

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Medical	53%	54%	53%	56%
Advanced Industrial	47%	46%	47%	44%
Total	100%	100%	100%	100%

The majority of revenue from the Photonics and Precision Motion segments is generated from sales to customers in the advanced industrial market. The majority of revenue from the Vision segment is generated from sales to customers in the medical market.

**17. Subsequent Events**

On October 5, 2021, the Company entered into an amendment (the “Fourth Amendment”) to the Third Amended and Restated Credit Agreement to exercise the accordion option. The Fourth Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$200.0 million, from \$495.0 million to \$695.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the Consolidated Financial Statements and Notes included in Item 1 of this Quarterly Report on Form 10-Q. The MD&A contains certain forward-looking statements within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. These forward-looking statements include, but are not limited to the anticipated impacts of the COVID-19 pandemic on our business, our financial results and our financial condition; our belief that the Purchasing Managers Index ("PMI") may provide an indication of the impact of general economic conditions on our sales into the advanced industrial end market; our strategy; anticipated financial performance; expected liquidity and capitalization; drivers of revenue growth and our growth expectations in various markets; management's plans and objectives for future operations, expenditures and product development and investments in research and development; business prospects; potential of future product releases and expansion of our product and service offerings; anticipated revenue performance; industry trends; market conditions; our competitive positions; changes in economic and political conditions, including supply chain constraints; changes in accounting principles; changes in actual or assumed tax liabilities; expectations regarding tax exposures; anticipated reinvestment of future earnings and dividend policy; anticipated expenditures in regard to the Company's benefit plans; future acquisitions; integration and anticipated benefits from acquisitions and dispositions; anticipated economic benefits, costs and timelines of restructuring programs; ability to repay our indebtedness; our intentions regarding the use of cash; expectations regarding legal and regulatory environmental requirements and our compliance thereto; and other statements that are not historical facts. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various important factors, including, but not limited to, the following: economic and political conditions and the effects of these conditions on our customers' businesses and level of business activities; our significant dependence upon our customers' capital expenditures, which are subject to cyclical market fluctuations; our dependence upon our ability to respond to fluctuations in product demand; our ability to continually innovate and successfully commercialize our innovations; failure to introduce new products in a timely manner; customer order timing and other similar factors beyond our control; disruptions or breaches in security of our information technology systems; our failure to comply with data privacy regulations; changes in interest rates, credit ratings or foreign currency exchange rates; risks associated with our operations in foreign countries; risks associated with the COVID-19 pandemic and other events outside our control; our increased use of outsourcing in foreign countries; risks associated with increased outsourcing of components manufacturing; our exposure to increased tariffs, trade restrictions or taxes on our products; negative effects on global economic conditions, financial markets and our business as a result of the United Kingdom's withdrawal from the European Union; violations of our intellectual property rights and our ability to protect our intellectual property against infringement by third parties; risk of losing our competitive advantage; our failure to successfully integrate recent and future acquisitions into our business; our ability to attract and retain key personnel; our restructuring and realignment activities and disruptions to our operations as a result of consolidation of our operations; product defects or problems integrating our products with other vendors' products; disruptions in the supply of certain key components or other goods from our suppliers; our failure to accurately forecast component and raw material requirements leading to excess inventories or delays in the delivery of our products; production difficulties and product delivery delays or disruptions; our exposure to medical device regulations, which may impede or hinder the approval or sale of our products and, in some cases, may ultimately result in an inability to obtain approval of certain products or may result in the recall or seizure of previously approved products; potential penalties for violating foreign, U.S. federal, and state healthcare laws and regulations; changes in governmental regulations affecting our business or products; our compliance, or failure to comply, with environmental regulations; our failure to implement new information technology systems and software successfully; our failure to realize the full value of our intangible assets; our exposure to the credit risk of some of our customers and in weakened markets; our reliance on third party distribution channels; being subject to U.S. federal income taxation even though we are a non-U.S. corporation; changes in tax laws, and fluctuations in our effective tax rates; any need for additional capital to adequately respond to business challenges or opportunities and repay or refinance our existing indebtedness, which may not be available on acceptable terms or at all; our existing indebtedness limiting our ability to engage in certain activities; volatility in the market price for our common shares; and our failure to maintain appropriate internal controls in the future. Other important risk factors that could affect the outcome of the events set forth in these statements and that could affect the Company's operating results and financial condition are discussed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 under the heading "Risk Factors" as updated in our other filings with the Securities and Exchange Commission. In this Quarterly Report on Form 10-Q, the words "anticipates," "believes," "expects," "intends," "future," "could," "estimates," "plans," "would," "should," "potential," "continues," and similar words or expressions (as well as other words or expressions referencing future events, conditions or circumstances) identify forward-looking statements. Readers should not place undue reliance on any such forward-looking statements, which speak only as of the date they are made. Management and the Company disclaim any obligation to publicly update or revise any such statement to reflect any change in its expectations or in events, conditions, or circumstances on which any such statements may be based, or that may affect the likelihood that actual results will differ from those contained in the forward-looking statements, except as required under applicable law.





## Accounting Period

The interim financial statements of Novanta Inc. and its subsidiaries (collectively referred to as the “Company”, “we”, “us”, “our”) are prepared for each quarterly period ending on the Friday closest to the end of the calendar quarter, with the exception of the fourth quarter which always ends on December 31.

## Business Overview

We are a leading global supplier of core technology solutions that give medical and advanced industrial original equipment manufacturers (“OEMs”) a competitive advantage. We combine deep proprietary technology expertise and competencies in photonics, vision and precision motion with a proven ability to solve complex technical challenges. This enables us to engineer core components and sub-systems that deliver extreme precision and performance, tailored to our customers' demanding applications.

## Reportable Segments

We operate in three reportable segments: Photonics, Vision, and Precision Motion. The reportable segments and their principal activities consist of the following:

### *Photonics*

Our Photonics segment designs, manufactures and markets photonics-based solutions, including laser scanning, laser beam delivery, CO2 laser, solid state laser, ultrafast laser, and optical light engine products to customers worldwide. The segment serves highly demanding photonics-based applications for advanced industrial processes, metrology, medical and life science imaging, DNA sequencing, and medical laser procedures. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

### *Vision*

Our Vision segment designs, manufactures and markets a range of medical grade technologies, including medical insufflators, pumps and related disposables; visualization solutions; wireless, recorder and video integration technologies for operating room integrations; optical data collection and machine vision technologies; radio frequency identification (“RFID”) technologies; thermal chart recorders; spectrometry technologies; and embedded touch screen solutions. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

### *Precision Motion*

Our Precision Motion segment designs, manufactures and markets optical and inductive encoders, precision motor and motion control sub-assemblies, servo drives, intelligent robotic end-of-arm technology solutions, air bearings, and air bearing spindles to customers worldwide. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

## End Markets

We primarily operate in two end markets: the medical market and the advanced industrial market.

### *Medical Market*

For the nine months ended October 1, 2021, the medical market accounted for approximately 53% of our revenue. Revenue from our products sold to the medical market is generally affected by hospital and other healthcare provider capital spending, growth rates of surgical procedures, changes in regulatory requirements and laws, aggregation of purchasing by healthcare networks, changes in technology requirements, timing of OEM customers' product development and new product launches, changes in customer or patient preferences, and general demographic trends.

### *Advanced Industrial Market*

For the nine months ended October 1, 2021, the advanced industrial market accounted for approximately 47% of our revenue. Revenue from our products sold to the advanced industrial market is affected by a number of factors, including changing technology requirements and preferences of our customers, productivity or quality investments in a manufacturing environment, financial

condition of our customers, changes in regulatory requirements and laws, and general economic conditions. We believe that the Purchasing Managers Index (PMI) on manufacturing activities specific to different regions around the world may provide an indication of the impact of general economic conditions on our sales into the advanced industrial market.

## Strategy

Our strategy is to drive sustainable, profitable growth through short-term and long-term initiatives, including:

- disciplined focus on our diversified business model of providing components and sub-systems to long life-cycle OEM customer platforms in attractive medical and advanced industrial niche markets;
- improving our business mix to increase medical sales as a percentage of total revenue by:
  - introducing new products aimed at attractive medical applications, such as minimally invasive and robotic surgery, ophthalmology, patient monitoring, drug delivery, clinical laboratory testing and life science equipment;
  - deepening our key account management relationships with and driving cross selling of our product offerings to leading medical equipment manufacturers; and
  - pursuing complementary medical technology acquisitions;
- increasing our penetration of high growth advanced industrial applications, such as laser materials processing, robotics, laser additive manufacturing, automation and metrology, by working closely with OEM customers to launch application specific products that closely match the requirements of each application;
- broadening our portfolio of enabling proprietary technologies and capabilities through increased investment in new product development, and investments in application development to further penetrate existing customers, while expanding the applicability of our solutions to new markets;
- broadening our product and service offerings through the acquisition of innovative and complementary technologies and solutions in medical and advanced industrial technology applications, including increasing our recurring revenue streams such as services, spare parts and consumables;
- expanding sales and marketing channels to reach new target customers;
- improving our existing operations to expand profit margins and improve customer satisfaction by implementing lean manufacturing principles, strategic sourcing across our major production sites; and optimizing and limiting the growth of our fixed cost base; and
- attracting, retaining, and developing world-class talented and motivated employees.

## Significant Events and Updates

### *Acquisition of ATI Industrial Automation, Inc.*

On August 30, 2021, we acquired 100% of the outstanding shares of ATI Industrial Automation, Inc. (“ATI”), an Apex, North Carolina-based leading supplier of intelligent end-of-arm technology solutions to OEMs for advanced industrial and surgical robots for an initial cash purchase price of \$170.0 million, net of cash acquired, and \$51.9 million estimated fair value of contingent consideration. The contingent consideration will be payable in 2022 based on actual standalone ATI Adjusted EBITDA, as defined in the purchase and sale agreement, for the fiscal year ending December 31, 2021. The initial cash purchase price was financed with borrowings under our revolving credit facility and cash available on hand. We expect that the addition of ATI will complement and add intelligent technology solutions to further expand our position in mission critical robotic applications. ATI will contribute to our operations and growth within the Precision Motion reportable segment.

### *Acquisition of Schneider Electric Motion USA, Inc.*

On August 31, 2021, we acquired 100% of the outstanding shares of Schneider Electric Motion USA, Inc. (“SEM”), a Marlborough, Connecticut-based manufacturer of integrated stepper motors and electronic controls for automation equipment for a total purchase price of \$115.1 million, net of cash acquired, subject to customary working capital adjustment. The acquisition was financed

with borrowings under our revolving credit facility. We expect that the addition of SEM will complement and expand our presence in life science applications and solutions for industrial automation applications within the Precision Motion reportable segment.

### ***Impact of COVID-19 on Our Business***

In response to the COVID-19 pandemic, we have taken proactive, aggressive actions to protect the health and safety of our employees. We established steering committees at both the corporate level and at each of our major facilities to provide leadership for and manage our COVID-19 risk mitigation actions and countermeasures. We have provided frequent employee communications that include guidance and updates to our employees with regards to COVID-19 safety procedures and status. We established rigorous safety measures in all of our facilities, including implementing social distancing protocols, working from home for those employees that do not need to be physically present on the manufacturing floor or in our facilities to perform their work, reducing travel, spreading production over more shifts, implementing temperature checks at the entrances to our facilities, frequently disinfecting our workspaces, and providing masks to those employees who must be physically present in our facilities. We expect to continue these measures until we determine that the COVID-19 pandemic is adequately contained for purposes of our business. In connection with our COVID-19 remediation actions, we have incurred additional costs to protect the health of our employees, including investments in technologies and monitoring equipment and weekly testing of employees for COVID-19 at certain locations. We expect such costs to continue to be significant to our cost of operations. We may take further actions as government authorities require or recommend or as we determine to be in the best interest of our employees.

The outbreak has significantly increased economic and demand uncertainty. Even as governmental restrictions are relaxed and economies gradually, partially or fully, reopen, the ongoing economic impacts and health concerns associated with COVID-19 may continue to affect customer demand and restrictions may resume.

Through October 1, 2021, we experienced some disruptions to our supply chain as a result of the COVID-19 pandemic and the recent electronics and other material shortages. We regularly monitor the manufacturing output of companies in our supply chain. Disruptions to our suppliers or sub-suppliers caused by these events could cause further challenges in our ability to obtain raw materials or components required to manufacture our products, adversely affecting our operations.

To mitigate the risk of any potential supply interruptions from the COVID-19 pandemic and the electronics and other material shortages, we are identifying alternative suppliers and distributors, sourcing raw materials from different supplier and distributor locations, modifying our designs to allow for alternative components to be used without compromising quality, performance or other requirements and taking other actions to ensure our supply of raw materials. Despite of our mitigation actions, if certain suppliers cannot produce a key part or component for us, or if the receipt of certain materials is otherwise delayed, we may miss our scheduled shipment deadlines and our relationship with customers may be harmed.

Additionally, restrictions on or disruptions of transportation, such as reduced availability of air transports, port closures and backlogs, and increased border controls or closures, have resulted in higher costs and delays, both for obtaining raw materials from suppliers and for shipping finished products to customers.

The COVID-19 pandemic and the recent electronics and other material shortages have caused inflationary pressures on the market prices for certain of our parts and primary raw materials as well as increases in the costs of freight, packaging, energy and other consumables that are used in our manufacturing processes. We have generally been able to offset increases in these costs through various productivity and cost reduction initiatives, as well as adjusting our selling prices to pass through some of these higher costs to our customers; however, our ability to raise our selling prices depends on market conditions and competitive dynamics. Given the timing of our actions compared to the timing of these inflationary pressures, there may be periods during which we are unable to fully recover the increases in our costs.

## Results of Operations for the Three and Nine Months Ended October 1, 2021 Compared with the Three and Nine Months Ended October 2, 2020

The following table sets forth our unaudited results of operations as a percentage of revenue for the periods indicated:

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Revenue	100.0%	100.0%	100.0%	100.0%
Cost of revenue	57.1	58.6	57.2	58.9
Gross profit	42.9	41.4	42.8	41.1
Operating expenses:				
Research and development and engineering	9.8	10.7	10.5	10.2
Selling, general and administrative	17.6	18.7	18.5	18.6
Amortization of purchased intangible assets	2.3	2.5	2.2	2.3
Restructuring, acquisition, and related costs	4.6	1.2	3.2	1.3
Total operating expenses	34.3	33.1	34.5	32.4
Operating income	8.6	8.3	8.3	8.8
Interest income (expense), net	(1.0)	(1.2)	(0.9)	(1.1)
Foreign exchange transaction gains (losses), net	0.0	(0.1)	(0.1)	(0.0)
Other income (expense), net	(0.0)	(0.0)	(0.0)	0.0
Income before income taxes	7.6	7.0	7.4	7.6
Income tax provision (benefit)	(0.0)	1.2	0.1	0.4
Consolidated net income	7.7%	5.8%	7.2%	7.2%

### Overview of Financial Results

Total revenue of \$177.7 million for the three months ended October 1, 2021 increased \$34.8 million, or 24.3%, from the prior year period primarily due to increased demand in the advanced industrial market related to microelectronics and as a result of increases in industrial manufacturing spending as compared to the 2020 period, which was impacted by COVID-19, as well as revenue from current year acquisitions. The effect of our current year acquisitions resulted in an increase in revenue of \$11.1 million, or 7.7%. In addition, foreign currency exchange rates positively impacted our revenue by \$2.2 million, or 1.5%, for the three months ended October 1, 2021.

Total revenue of \$507.8 million for the nine months ended October 1, 2021 increased \$64.7 million, or 14.6%, from the prior year period primarily due to increased demand in the advanced industrial market related to microelectronics and as a result of increases in industrial manufacturing spending as compared to the 2020 period, which was impacted by COVID-19. The effect of our current year acquisitions also resulted in an increase in revenue of \$11.1 million, or 2.5%. In addition, foreign currency exchange rates positively impacted our revenue by \$13.8 million, or 3.1%, for the nine months ended October 1, 2021.

Operating income of \$15.3 million for the three months ended October 1, 2021 increased \$3.4 million, or 28.7%, from the prior year period. This increase was attributable to an increase in gross profit of \$17.2 million primarily attributable to higher revenue, partially offset by an increase in research and development and engineering (“R&D”) expenses of \$2.2 million, selling, general and administrative (“SG&A”) expenses of \$4.5 million and restructuring, acquisition, and related charges of \$6.4 million.

Operating income of \$42.4 million for the nine months ended October 1, 2021 increased \$3.5 million, or 9.1%, from the prior year period. This increase was attributable to an increase in gross profit of \$35.2 million primarily attributable to higher revenue, partially offset by an increase in R&D expenses of \$8.1 million, SG&A expenses of \$11.7 million and restructuring, acquisition, and related charges of \$10.9 million.

Basic earnings per common share (“Basic EPS”) of \$0.38 for the three months ended October 1, 2021 increased \$0.15 from the prior year period. Diluted earnings per common share (“Diluted EPS”) of \$0.38 for the three months ended October 1, 2021 increased \$0.15 from the prior year period. The increases were primarily attributable to an increase in operating income and a decrease in income tax provision (benefit).

Basic EPS of \$1.03 for the nine months ended October 1, 2021 increased \$0.12 from the prior year period. Diluted EPS of \$1.02 for the nine months ended October 1, 2021 increased \$0.13 from the prior year period. The increases were primarily attributable to an increase in operating income and a decrease in income tax provision.

## Revenue

The following table sets forth external revenue by reportable segment for the periods noted (dollars in thousands):

	Three Months Ended		Increase (Decrease)	Percentage Change
	October 1, 2021	October 2, 2020		
Photonics	\$ 55,263	\$ 46,394	\$ 8,869	19.1%
Vision	65,346	64,299	1,047	1.6%
Precision Motion	57,117	32,236	24,881	77.2%
Total	<u>\$ 177,726</u>	<u>\$ 142,929</u>	<u>\$ 34,797</u>	24.3%

  

	Nine Months Ended		Increase (Decrease)	Percentage Change
	October 1, 2021	October 2, 2020		
Photonics	\$ 176,113	\$ 149,337	\$ 26,776	17.9%
Vision	196,429	198,047	(1,618)	(0.8)%
Precision Motion	135,291	95,741	39,550	41.3%
Total	<u>\$ 507,833</u>	<u>\$ 443,125</u>	<u>\$ 64,708</u>	14.6%

### Photonics

Photonics segment revenue for the three months ended October 1, 2021 increased by \$8.9 million, or 19.1%, versus the prior year period, primarily due to increased demand in the advanced industrial market as a result of increases in industrial manufacturing spending as compared to the 2020 period, which was impacted by COVID-19. Revenue was negatively impacted during the three months ended October 1, 2021 due to temporary production shutdowns in our factories in Taunton, U.K. and Suzhou, China.

Photonics segment revenue for the nine months ended October 1, 2021 increased by \$26.8 million, or 17.9%, versus the prior year period, primarily due to increased demand in the advanced industrial market as a result of increases in industrial manufacturing spending as compared to the 2020 period, which was impacted by COVID-19.

### Vision

Vision segment revenue for the three months ended October 1, 2021 increased by \$1.0 million, or 1.6%, versus the prior year period, primarily due to an increase in demand for our medical end market products.

Vision segment revenue for the nine months ended October 1, 2021 decreased by \$1.6 million, or 0.8%, versus the prior year period, primarily due to a decrease in revenue from our minimally invasive surgery ("MIS") products as a result of continued deferrals of elective surgical procedures during the COVID-19 pandemic.

### Precision Motion

Precision Motion segment revenue for the three months ended October 1, 2021 increased by \$24.9 million, or 77.2%, versus the prior year period, primarily due to increased demand in advanced industrial and medical markets and \$11.1 million of revenue contributions from the ATI and SEM acquisitions.

Precision Motion segment revenue for the nine months ended October 1, 2021 increased by \$39.6 million, or 41.3%, versus the prior year period, primarily due to increased demand in advanced industrial market as a result of an increase in industrial manufacturing spending and \$11.1 million of revenue contributions from the ATI and SEM acquisitions.



## Gross Profit and Gross Profit Margin

The following table sets forth the gross profit and gross profit margin for each of our reportable segments for the periods noted (dollars in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Gross profit:</b>				
Photonics	\$ 25,311	\$ 20,166	\$ 83,014	\$ 65,725
Vision	24,763	24,586	76,132	75,676
Precision Motion	27,743	15,011	64,694	42,753
Unallocated Corporate and Shared Services	(1,519)	(658)	(6,396)	(1,902)
<b>Total</b>	<b>\$ 76,298</b>	<b>\$ 59,105</b>	<b>\$ 217,444</b>	<b>\$ 182,252</b>
<b>Gross profit margin:</b>				
Photonics	45.8%	43.5%	47.1%	44.0%
Vision	37.9%	38.2%	38.8%	38.2%
Precision Motion	48.6%	46.6%	47.8%	44.7%
<b>Total</b>	<b>42.9%</b>	<b>41.4%</b>	<b>42.8%</b>	<b>41.1%</b>

Gross profit and gross profit margin can be influenced by a number of factors, including product mix, pricing, volume, manufacturing efficiencies and utilization, costs for raw materials and outsourced manufacturing, trade tariffs, freight costs, headcount, inventory obsolescence and warranty expenses.

### Photonics

Photonics segment gross profit for the three months ended October 1, 2021 increased \$5.1 million, or 25.5%, versus the prior year period, primarily due to an increase in both revenue and gross profit margin. Photonics segment gross profit margin was 45.8% for the three months ended October 1, 2021, versus a gross profit margin of 43.5% for the prior year period. The increase in gross profit margin was primarily attributable to higher production volumes.

Photonics segment gross profit for the nine months ended October 1, 2021 increased \$17.3 million, or 26.3%, versus the prior year period, primarily due to an increase in both revenue and gross profit margin. Photonics segment gross profit margin was 47.1% for the nine months ended October 1, 2021, versus a gross profit margin of 44.0% for the prior year period. The increase in gross profit margin was primarily attributable to higher factory utilization associated with higher production volumes.

### Vision

Vision segment gross profit for the three months ended October 1, 2021 increased \$0.2 million, or 0.7%, versus the prior year period. Vision segment gross profit margin was 37.9% for the three months ended October 1, 2021, versus a gross profit margin of 38.2% for the prior year period.

Vision segment gross profit for the nine months ended October 1, 2021 increased \$0.5 million, or 0.6%, versus the prior year period. Vision segment gross profit margin was 38.8% for the nine months ended October 1, 2021, versus a gross profit margin of 38.2% for the prior year period.

### Precision Motion

Precision Motion segment gross profit for the three months ended October 1, 2021 increased \$12.7 million, or 84.8%, versus the prior year period, primarily due to an increase in both revenue and gross profit margin. Precision Motion segment gross profit margin was 48.6% for the three months ended October 1, 2021, versus a gross profit margin of 46.6% for the prior year period. The increase in gross profit margin was primarily attributable to higher factory utilization associated with higher production volumes.

Precision Motion segment gross profit for the nine months ended October 1, 2021 increased \$21.9 million, or 51.3%, versus the prior year period, primarily due to an increase in both revenue and gross profit margin. Precision Motion segment gross profit margin was 47.8% for the nine months ended October 1, 2021, versus a gross profit margin of 44.7% for the prior year period. The increase in

gross profit margin was primarily attributable to higher factory utilization associated with higher production volumes and favorable year over year comparison due to higher inventory obsolescence in the prior year period.

### *Unallocated Corporate and Shared Services*

Unallocated corporate and shared services costs primarily represent costs of corporate and shared services functions that are not allocated to the operating segments. These costs for the three months ended October 1, 2021 increased by \$0.9 million versus the prior year period primarily due to COVID-19 testing costs for employees of \$0.4 million.

Unallocated corporate and shared services costs for the nine months ended October 1, 2021 increased by \$4.5 million versus the prior year period primarily due to COVID-19 testing costs for employees of \$3.3 million.

### *Operating Expenses*

The following table sets forth operating expenses for the periods noted (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Research and development and engineering	\$ 17,468	\$ 15,231	\$ 53,104	\$ 45,005
Selling, general and administrative	31,296	26,788	94,189	82,451
Amortization of purchased intangible assets	4,139	3,533	11,300	10,388
Restructuring, acquisition, and related costs	8,120	1,687	16,485	5,591
Total	<u>\$ 61,023</u>	<u>\$ 47,239</u>	<u>\$ 175,078</u>	<u>\$ 143,435</u>

### *Research and Development and Engineering Expenses*

R&D expenses are primarily comprised of employee compensation related expenses and cost of materials for R&D projects. R&D expenses were \$17.5 million, or 9.8% of revenue, during the three months ended October 1, 2021, versus \$15.2 million, or 10.7% of revenue, during the prior year period. R&D expenses increased in terms of total dollars primarily due to higher compensation related expense and R&D expenses from current year acquisitions. R&D expenses decreased as a percentage of revenue due to the timing of acquisitions.

R&D expenses were \$53.1 million, or 10.5% of revenue, during the nine months ended October 1, 2021, versus \$45.0 million, or 10.2% of revenue, during the prior year period. R&D expenses increased in terms of total dollars and as a percentage of revenue primarily due to higher compensation related expenses.

### *Selling, General and Administrative Expenses*

Selling, general and administrative (“SG&A”) expenses include costs for sales and marketing, sales administration, finance, human resources, legal, information systems, and executive management functions. SG&A expenses were \$31.3 million, or 17.6% of revenue, during the three months ended October 1, 2021, versus \$26.8 million, or 18.7% of revenue, during the prior year period. SG&A expenses increased in terms of total dollars primarily due to higher variable compensation expense as a result of the re-establishment of employee bonus plans in 2021 and SG&A expenses from current year acquisitions. SG&A expenses decreased as a percentage of revenue due to the timing of acquisitions.

SG&A expenses were \$94.2 million, or 18.5% of revenue, during the nine months ended October 1, 2021, versus \$82.5 million, or 18.6% of revenue, during the prior year period. SG&A expenses increased in terms of total dollars primarily due to higher share-based compensation expense and higher variable compensation expense as a result of the re-establishment of employee bonus plans in 2021.

### *Amortization of Purchased Intangible Assets*

Amortization of purchased intangible assets, excluding amortization of developed technologies that is included in cost of revenue, was \$4.1 million, or 2.3% of revenue, during the three months ended October 1, 2021, versus \$3.5 million, or 2.5% of revenue, during the prior year period. The increase, in terms of total dollars was the result of more acquired intangible assets from current year acquisitions.

Amortization of purchased intangible assets, excluding amortization of developed technologies that is included in cost of revenue, was \$11.3 million, or 2.2% of revenue, during the nine months ended October 1, 2021, versus \$10.4 million, or 2.3% of revenue, during

the prior year period. The increase, in terms of total dollars was the result of more acquired intangible assets from current year acquisitions.

### *Restructuring, Acquisition, and Related Costs*

We recorded restructuring, acquisition, and related costs of \$8.1 million during the three months ended October 1, 2021, versus \$1.7 million during the prior year period. The increase in restructuring, acquisition, and related costs versus the prior year period was primarily due to an increase in acquisition costs related to current year acquisitions and restructuring costs related to the 2020 restructuring plan.

We recorded restructuring, acquisition, and related costs of \$16.5 million during the nine months ended October 1, 2021, versus \$5.6 million during the prior year period. The increase in restructuring, acquisition, and related costs versus the prior year period was primarily due to an increase in acquisition costs related to current year acquisitions, restructuring costs related to the 2020 restructuring plan, and legal fees related to a dispute involving a company we acquired in 2019.

### *Operating Income (Loss) by Segment*

The following table sets forth operating income (loss) by segment for the periods noted (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Operating Income (Loss)</b>				
Photonics	\$ 9,294	\$ 7,026	\$ 35,885	\$ 22,878
Vision	5,606	3,799	12,178	14,098
Precision Motion	14,957	7,675	34,681	20,728
Unallocated Corporate and Shared Services	(14,582)	(6,634)	(40,378)	(18,887)
<b>Total</b>	<u>\$ 15,275</u>	<u>\$ 11,866</u>	<u>\$ 42,366</u>	<u>\$ 38,817</u>

#### *Photonics*

Photonics segment operating income was \$9.3 million, or 16.8% of revenue, during the three months ended October 1, 2021, versus \$7.0 million, or 15.1% of revenue, during the prior year period. The increase in operating income was primarily due to an increase in gross profit of \$5.1 million, partially offset by an increase in restructuring charges of \$2.3 million.

Photonics segment operating income was \$35.9 million, or 20.4% of revenue, during the nine months ended October 1, 2021, versus \$22.9 million, or 15.3% of revenue, during the prior year period. The increase in operating income was primarily due to an increase in gross profit of \$17.3 million, partially offset by an increase in R&D spending of \$1.5 million and restructuring, acquisition, and related charges of \$3.1 million.

#### *Vision*

Vision segment operating income was \$5.6 million, or 8.6% of revenue, during the three months ended October 1, 2021, versus \$3.8 million, or 5.9% of revenue, during the prior year period. The increase in operating income was primarily due to a decrease in SG&A expenses of \$0.5 million and restructuring, acquisitions, and related charges of \$1.2 million.

Vision segment operating income was \$12.2 million, or 6.2% of revenue, during the nine months ended October 1, 2021, versus \$14.1 million, or 7.1% of revenue, during the prior year period. The decrease in operating income was primarily due to an increase in R&D spending of \$3.6 million, partially offset by an increase in gross profit of \$0.5 million and a decrease in SG&A expenses of \$1.0 million.

#### *Precision Motion*

Precision Motion segment operating income was \$15.0 million, or 26.2% of revenue, during the three months ended October 1, 2021, versus \$7.7 million, or 23.8% of revenue, during the prior year period. The increase in operating income was primarily due to an increase in gross profit of \$12.7 million, partially offset by an increase in R&D spending of \$1.7 million, SG&A expenses of \$1.3 million and restructuring, acquisition, and related charges of \$1.9 million.

Precision Motion segment operating income was \$34.7 million, or 25.6% of revenue, during the nine months ended October 1, 2021, versus \$20.7 million, or 21.7% of revenue, during the prior year period. The increase in operating income was primarily due to

an increase in gross profit of \$21.9 million, partially offset by an increase in restructuring, acquisition, and related charges of \$3.4 million, R&D spending of \$3.0 million and SG&A expenses of \$1.0 million.

### *Unallocated Corporate and Shared Services*

Unallocated corporate and shared services costs primarily represent costs of corporate and shared services functions that are not allocated to the operating segments, including certain restructuring and most acquisition costs. These costs for the three months ended October 1, 2021 increased by \$7.9 million versus the prior year period primarily due to costs related to COVID-19 testing for employees of \$0.4 million included in cost of revenue, an increase in SG&A spending of \$4.3 million primarily related to the re-establishment of employee bonus plans in 2021, and an increase in restructuring, acquisition, and related charges of \$2.9 million.

Unallocated corporate and shared services costs for the nine months ended October 1, 2021 increased by \$21.5 million versus the prior year period primarily due to costs related to COVID-19 testing for employees of \$3.3 million included in cost of revenue, an increase in SG&A spending of \$12.4 million primarily related to share-based compensation, the re-establishment of employee bonus plans in 2021, and an increase in restructuring, acquisition, and related charges of \$4.6 million.

### *Other Income and Expense Items*

The following table sets forth other income and expense items for the periods noted (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Interest income (expense), net	\$ (1,710)	\$ (1,698)	\$ (4,496)	\$ (5,077)
Foreign exchange transaction gains (losses), net	34	(136)	(299)	(164)
Other income (expense), net	(71)	(14)	(238)	47

### *Interest Income (Expense), Net*

Net interest expense was \$1.7 million for both the three months ended October 1, 2021 and the prior year period. The weighted average interest rate on our senior credit facilities was 2.28% during the three months ended October 1, 2021, versus 2.31% during the prior year period.

Net interest expense was \$4.5 million for the nine months ended October 1, 2021, versus \$5.1 million in the prior year period. The decrease in net interest expense was primarily due to a decrease in average debt levels and a decrease in the weighted average interest rate on our senior credit facilities. The weighted average interest rate on our senior credit facilities was 2.12% during the nine months ended October 1, 2021, versus 2.37% during the prior year period.

### *Foreign Exchange Transaction Gains (Losses), Net*

Foreign exchange transaction gains (losses) were less than \$0.1 million net gain for the three months ended October 1, 2021, versus \$(0.1) million net losses in the prior year period.

Foreign exchange transaction gains (losses) were \$(0.3) million net losses for the nine months ended October 1, 2021, versus \$(0.2) million net losses in the prior year period.

### *Other Income (Expense), Net*

Net other expense was nominal for both the three and nine months ended October 1, 2021 and the three and nine months ended October 2, 2020.

### *Income Tax Provision (Benefit)*

Our effective tax rate for the three months ended October 1, 2021 was (0.6%), versus 17.6% for the prior year period. Our effective tax rate of (0.6%) for the three months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, windfall tax benefits upon vesting of certain share-based compensation awards and a

release of uncertain tax position reserves due to expiration of statutes of limitation, partially offset by an increase in our valuation allowance.



Our effective tax rate of 17.6% for the three months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions and other tax credits.

Our effective tax rate for the nine months ended October 1, 2021 was 2.0%, versus 5.2% for the prior year period. Our effective tax rate of 2.0% for the nine months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, a release of uncertain tax positions reserves, and windfall tax benefits upon vesting of certain share-based compensation awards, partially offset by the revaluation of long term deferred tax balances resulting from the U.K. corporate tax rate change during the period and an increase in our valuation allowances. For the nine months ended October 1, 2021, the windfall tax benefits upon vesting of certain share-based compensation awards had a benefit of 14.5% on our effective tax rate.

Our effective tax rate of 5.2% for the nine months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, windfall tax benefits upon vesting of certain share-based compensation awards during the period, and a release of a portion of the valuation allowance on our deferred tax assets in Canada. For the nine months ended October 2, 2020, the windfall tax benefits upon vesting of certain share-based compensation awards and the release of the valuation allowance had a benefit of 7.9% and 3.3%, respectively, on our effective tax rate.

## Liquidity and Capital Resources

We assess our liquidity in terms of our ability to generate cash to fund our operating, investing, and financing activities. Our primary ongoing cash requirements are funding operations, capital expenditures, investments in businesses, and repayment of debt and related interest payments. Our primary sources of liquidity are cash flows from operations and borrowings under our revolving credit facility. We believe our future operating cash flows will be sufficient to meet our future operating and capital expenditure cash needs for the foreseeable future, including at least the next 12 months. The availability of borrowing capacity under our revolving credit facility provides a potential source of liquidity for any future capital expenditures and other liquidity needs. In addition, we have the ability to expand our borrowing capacity by up to \$200.0 million by exercising the accordion feature under our revolving credit agreement. We may also seek to raise additional capital, which could be in the form of bonds, convertible debt or preferred or common equity, to fund business development activities or other future investing cash requirements, subject to approval by the lenders in the Third Amended and Restated Credit Agreement. There is no assurance that such capital will be available on reasonable terms or at all.

Significant factors affecting the management of our ongoing cash requirements are the adequacy of available bank lines of credit and our ability to attract long term capital with satisfactory terms. The sources of our liquidity are subject to all of the risks of our business and could be adversely affected by, among other factors, risks associated with events outside our control, such as the economic consequences of the COVID-19 pandemic, worsening supply chain disruptions and electronics and material shortages, a decrease in demand for our products, our ability to integrate current and future acquisitions, deterioration in certain financial ratios, availability of borrowings under our revolving credit facility, and market changes in general. See “Risks Relating to Our Common Shares and Our Capital Structure” included in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

Our ability to make payments on our indebtedness and to fund our operations may be dependent upon the earnings and the distribution of funds from our subsidiaries. Local laws and regulations and/or the terms of our indebtedness restrict certain of our subsidiaries from paying dividends and transferring assets to us. There is no assurance that the applicable laws and regulations and/or the terms of our indebtedness will permit our subsidiaries to provide us with sufficient dividends, distributions or loans when necessary.

As of October 1, 2021, \$69.0 million of our \$102.4 million cash and cash equivalents was held by subsidiaries outside of Canada and the United States. Generally, our intent is to use cash held in these foreign subsidiaries to fund our local operations or acquisitions by those local subsidiaries and to pay down borrowings under our Senior Credit Facilities (as defined below). Approximately \$171.6 million of our outstanding term loan and revolver borrowings under our Senior Credit Facilities were held in our subsidiaries outside of Canada and the United States. Additionally, we may use intercompany loans to address short-term cash flow needs for various subsidiaries.

We deferred certain U.S. payroll tax payments in 2020 in accordance with relief provisions under the CARES Act. As of October 1, 2021, we had \$2.8 million in such deferred U.S. payroll tax payments under the CARES Act. As permitted under the CARES Act, we expect to pay half of the deferred U.S. payroll tax payments by December 31, 2021 and the remaining half by December 31, 2022.

In May 2021, the Company's shareholders approved a special resolution to amend the Company's articles to authorize up to 7.0 million preferred shares for future issuance. The Company's Board of Directors may designate and issue one or more series of preferred shares in order to raise additional capital. As of October 1, 2021, no preferred shares had been issued and outstanding.

### *Senior Credit Facilities*

In December 2019, we entered into the Third Amended and Restated Credit Agreement, consisting of a \$100.0 million U.S. dollar equivalent euro-denominated 5-year term loan facility (approximately €90.2 million) and a \$350.0 million 5-year revolving credit facility (collectively, the "Senior Credit Facilities"). The Senior Credit Facilities mature in December 2024 and included an uncommitted "accordion" feature pursuant to which the commitments under the revolving credit facility may be increased by an additional \$200.0 million in aggregate, subject to certain customary conditions. The term loan facility requires quarterly scheduled principal repayments of approximately €1.1 million beginning in March 2020 with the remaining principal balance due upon maturity. We may make additional principal payments at any time, which will reduce the next quarterly installment payment due. We may pay down outstanding borrowings under our revolving credit facility with cash on hand and cash generated from future operations at any time.

In March 2020, we entered into an amendment (the "First Amendment") to the Third Amended and Restated Credit Agreement and exercised a portion of the uncommitted accordion feature. The First Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$145.0 million, from \$350.0 million to \$495.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

As of October 1, 2021, we had \$95.3 million term loan and \$355.3 million revolver borrowings outstanding under our Senior Credit Facilities. The borrowings outstanding under the Senior Credit Facilities bear interest at rates based on (a) the Base Rate, as defined in the Third Amended and Restated Credit Agreement, plus a margin ranging between 0.25% and 1.25% per annum, determined by reference to our consolidated leverage ratio, or (b) the Eurocurrency Rate, as defined in the Third Amended and Restated Credit Agreement, plus a margin ranging between 1.25% and 2.25% per annum, determined by reference to our consolidated leverage ratio. In addition, we are obligated to pay a commitment fee on the unused portion of the revolving credit facility, ranging between 0.20% and 0.40% per annum, determined by reference to our consolidated leverage ratio. As of October 1, 2021, we had outstanding borrowings under the Third Amended and Restated Credit Agreement denominated in Euro and U.S. Dollars of \$171.6 million and \$279.0 million, respectively.

On October 5, 2021, the Company entered into an amendment (the "Fourth Amendment") to the Third Amended and Restated Credit Agreement to exercise the accordion feature. The Fourth Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$200.0 million, from \$495.0 million to \$695.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

The Third Amended and Restated Credit Agreement contains various covenants that we believe are usual and customary for this type of agreement, including a maximum consolidated leverage ratio and a minimum consolidated fixed charge coverage ratio (as defined in the Third Amended and Restated Credit Agreement). The following table summarizes these financial covenants and our compliance therewith as of October 1, 2021:

	Requirement	Actual
Maximum consolidated leverage ratio	3.50	2.64
Minimum consolidated fixed charge coverage ratio	1.50	13.23

### *Share Repurchase Plans*

Our Board of Directors may approve share repurchase plans from time to time. Under these repurchase plans, shares may be repurchased at our discretion based on ongoing assessment of the capital needs of the business, the market price of our common shares, and general market conditions. Shares may also be repurchased through an accelerated share purchase agreement, on the open market or in privately negotiated transactions in accordance with applicable federal securities laws. Repurchases may be made under certain SEC regulations, which would permit common shares to be repurchased when we would otherwise be prohibited from doing so under insider trading laws. While the share repurchase plans are generally intended to offset dilution from equity awards granted to our employees and directors, the plans do not obligate us to acquire any particular amount of common shares. No time limit is typically set for the completion of the share repurchase plans, and the plans may be suspended or discontinued at any time. We expect to fund share repurchases through cash on hand and cash generated from operations.

In October 2018, our Board of Directors approved a share repurchase plan (the “2018 Repurchase Plan”) authorizing the repurchase of \$25.0 million worth of common shares. Share repurchases have been made under the 2018 Repurchase Plan pursuant to

Rule 10b-18 under the Securities Exchange Act of 1934. We had \$9.5 million available for share repurchases under the 2018 Repurchase Plan as of October 1, 2021.

In February 2020, our Board of Directors approved a new share repurchase plan (the “2020 Repurchase Plan”) authorizing the repurchase of an additional \$50.0 million worth of common shares. We expect that share repurchases will be made under the 2020 Repurchase Plan after the 2018 Repurchase Plan is completed. No shares have been repurchased under the 2020 Repurchase Plan to date.

### ***Cash Flows for the Nine Months Ended October 1, 2021 and October 2, 2020***

The following table summarizes our cash flows, cash and cash equivalents, and unused and available funds under our revolving credit facility for the periods indicated (in thousands):

	Nine Months Ended	
	October 1, 2021	October 2, 2020
Net cash provided by operating activities	\$ 65,912	\$ 93,686
Net cash used in investing activities	\$ (302,140)	\$ (9,796)
Net cash provided by (used in) financing activities	\$ 214,290	\$ (57,195)

  

	October 1, 2021	December 31, 2020
Cash and cash equivalents	\$ 102,395	\$ 125,054
Unused and available funds under revolving credit facility	\$ 139,712	\$ 395,239

### ***Operating Cash Flows***

Cash provided by operating activities was \$65.9 million for the nine months ended October 1, 2021, versus \$93.7 million for the prior year period. Cash provided by operating activities for the nine months ended October 1, 2021 decreased from the prior year period primarily due to an increase in accounts receivable and inventories due to increases in revenue and demand, and the \$8.3 million payout of an acquisition earnout recorded as compensation, partially offset by an increase in days payables outstanding and substantially no bonus payout in 2021 as a result of the elimination of our 2020 annual bonus plan.

Cash provided by operating activities for the nine months ended October 2, 2020 was positively impacted by an increase in our inventory turnover ratio from 3.1 at December 31, 2019 to 3.3 at October 2, 2020 and a decrease in accounts receivable, offset by a decrease in our days payables outstanding which decreased from 53 days at December 31, 2019 to 44 days at October 2, 2020. During the nine months ended October 2, 2020, we paid the 2019 annual employee bonuses which had been accrued for as of December 31, 2019.

### ***Investing Cash Flows***

Cash used in investing activities was \$302.1 million for the nine months ended October 1, 2021, primarily driven by the ATI and SEM acquisitions. In connection with these acquisitions, we paid cash consideration of \$285.2 million (net of cash acquired of \$14.6 million) during the nine months ended October 1, 2021. We also paid capital expenditures of \$14.8 million and a contingent consideration payment of \$2.2 million related to our 2016 asset acquisition of video signal processing and management technologies during the nine months ended October 1, 2021.

Cash used in investing activities was \$9.8 million for the nine months ended October 2, 2020, primarily related to capital expenditures of \$7.2 million and a contingent consideration payment of \$2.6 million related to our 2016 asset acquisition of video signal processing and management technologies.

We expect to use an aggregate of approximately \$20 million to \$22 million in fiscal 2021 for capital expenditures related to investments in new property, plant and equipment for our existing businesses.

### ***Financing Cash Flows***

Cash provided by financing activities was \$214.3 million for the nine months ended October 1, 2021, primarily due to \$280.0 million of borrowings under our revolving credit facility used to fund the cash considerations paid for the ATI and SEM acquisitions, partially offset by \$30.7 million of payroll tax payments upon vesting of share-based compensation awards, \$24.0 million of term loan

and revolver credit facility repayments, a \$8.7 million payment for the purchase of a building under a finance lease agreement, and \$1.8 million of contingent consideration payments related to acquisitions.

Cash used in financing activities was \$57.2 million for the nine months ended October 2, 2020, primarily due to \$34.0 million in repayments of borrowings under our Senior Credit Facilities, \$8.3 million of payroll tax payments upon vesting of share-based compensation awards, \$5.8 million payments of deferred and escrowed purchase price related to prior year acquisitions, \$5.5 million of repurchases of common shares, and \$1.6 million of fees paid in connection with the First Amendment to our Third Amended and Restated Credit Agreement.

## **Off-Balance Sheet Arrangements, Contractual Obligations**

### ***Contractual Obligations***

Our contractual obligations primarily consist of the principal and interest payments associated with our Senior Credit Facilities, operating and finance leases, purchase commitments, pension obligations, contingent considerations and earn-outs. Such contractual obligations are described in our Management's Discussion and Analysis of Financial Condition and Results of Operations and in the Notes to Consolidated Financial Statements, each included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. Excluding the estimated contingent considerations payments and non-cancellable inventory purchase commitments from current year acquisitions, through October 1, 2021, we have not entered into any other material new or modified contractual obligations since December 31, 2020.

### ***Off-Balance Sheet Arrangements***

Through October 1, 2021, we have not entered into any other off-balance sheet arrangements or material transactions with any unconsolidated entities or other persons.

## **Critical Accounting Policies and Estimates**

The critical accounting policies that we believe impact significant judgments and estimates used in the preparation of our consolidated financial statements presented in this periodic report on Form 10-Q are described in our Management's Discussion and Analysis of Financial Condition and Results of Operations and in the Notes to Consolidated Financial Statements, each included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. There have been no material changes to our critical accounting policies and estimates through October 1, 2021 from those disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

## **Recent Accounting Pronouncements**

See Note 1 to Consolidated Financial Statements.

## **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Our primary market risk exposures are foreign currency exchange rate fluctuations and interest rate sensitivity. During the three months ended October 1, 2021, there have been no material changes to the information included under Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk," in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

## **Item 4. Controls and Procedures**

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

As required by Rule 13a-15(b) under the Securities and Exchange Act of 1934 (the "Exchange Act"), our management carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) as of October 1, 2021, the end of the period covered by this report. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of October 1, 2021.

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

There has been no change to our internal control over financial reporting during the fiscal quarter ended October 1, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II—OTHER INFORMATION**

### **Item 1. Legal Proceedings**

The Company is subject to various legal proceedings and claims that arise in the ordinary course of business. The Company does not believe that the outcome of these claims will have a material adverse effect upon its financial condition or results of operations but there can be no assurance that any such claims, or any similar claims, would not have a material adverse effect upon its financial condition or results of operations.

### **Item 1A. Risk Factors**

The Company's risk factors are described in Part I, Item 1A, "Risk Factors", of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020. There have been no material changes in our risk factors as included in our Annual Report.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

### **Item 3. Defaults Upon Senior Securities**

None.

### **Item 4. Mine Safety Disclosures**

None.

### **Item 5. Other Information**

None.



## Item 6. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed/ Furnished Herewith
		Form	File No.	Exhibit	Filing Date	
2.1†	<a href="#">Stock Purchase Agreement dated July 9, 2021, between Novanta Corporation and Schneider Electric Holding, Inc.</a>					*
2.2†	<a href="#">Stock Purchase Agreement dated July 18, 2021, among Novanta Corporation, Novanta Technologies (Suzhou) Co. Ltd, ATI Industrial Automation, Inc. and ATI Industrial Automation (Lang Fang) Co. Ltd</a>					*
3.1	<a href="#">Certificate and Articles of Continuance of the Registrant, dated March 22, 1999</a>	S-3	333-202597	3.1	03/09/15	
3.2	<a href="#">By-Laws of the Registrant, as amended</a>	10-K	001-35083	3.2	03/01/21	
3.3	<a href="#">Articles of Reorganization of the Registrant, dated July 23, 2010</a>	8-K	000-25705	3.1	07/23/10	
3.4	<a href="#">Articles of Amendment of the Registrant, dated December 29, 2010</a>	8-K	000-25705	3.1	12/29/10	
3.5	<a href="#">Articles of Amendment of the Registrant, dated May 11, 2016</a>	8-K	001-35083	10.1	05/12/16	
3.6	<a href="#">Articles of Amendment of the Registrant, dated April 23, 2021</a>	8-K	001-35083	3.1	05/14/21	
10.1	<a href="#">Third Amendment to Third Amended and Restated Credit Agreement, dated September 22, 2021</a>					*
10.2	<a href="#">Fourth Amendment to Third Amended and Restated Credit Agreement, dated October 5, 2021</a>	10-Q	001-35083	10.2	05/11/21	
31.1	<a href="#">Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					*
31.2	<a href="#">Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					*
32.1	<a href="#">Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					**
32.2	<a href="#">Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					**
101.INS	Inline eXtensible Business Reporting Language (XBRL) Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					
101.SCH	Inline XBRL Taxonomy Extension Schema Document					*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					*
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					*



\* Filed herewith

\*\* Furnished herewith

† Certain schedules or appendices to this exhibit have been omitted pursuant to Regulation S-K Item 601(a)(5). A copy of any omitted schedule will be furnished to the Securities and Exchange Commission or its staff upon request.

## SIGNATURES

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

### Novanta Inc. (Registrant)

Name	Title	Date
<u>/s/ Matthijs Glastra</u> <b>Matthijs Glastra</b>	Chair of the Board, Chief Executive Officer	November 9, 2021
<u>/s/ Robert J. Buckley</u> <b>Robert J. Buckley</b>	Chief Financial Officer	November 9, 2021

**STOCK PURCHASE AGREEMENT**

Between

**NOVANTA CORPORATION**

And

**SCHNEIDER ELECTRIC HOLDINGS, INC.**

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Dated as of July 9, 2021



## TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.	1
1.1    Definitions	1
1.2    Terms Defined Elsewhere in this Agreement	8
II. SALE AND PURCHASE OF SHARES.	10
2.1    Sale and Purchase of Shares	10
2.2    Closing	10
2.3    Purchase Price Adjustment	11
III. REPRESENTATIONS AND WARRANTIES OF SELLER.	12
3.1    Organization and Good Standing	12
3.2    Authorization of Agreement	13
3.3    Conflicts; Consents of Third Parties	13
3.4    Capitalization	13
3.5    Subsidiaries	14
3.6    Financial Statements	14
3.7    No Undisclosed Liabilities	14
3.8    Absence of Certain Developments	14
3.9    Taxes	14
3.10   Real Property	15
3.11   Intellectual Property	16
3.12   Material Contracts	17
3.13   Employee Benefit Plans	18
3.14   Labor	19
3.15   Litigation	20
3.16   Compliance with Laws; Permits	20
3.17   Environmental Matters	21
3.18   Insurance	21
3.19   Related Party Transactions; Shared Contracts	22
3.20   Financial Advisors	22
3.21   Product and Service Warranties and Liabilities	22
3.22   Inventory; Supplies	22
3.23   Title; Sufficiency of Assets	22
3.24   No Other Representations or Warranties; Schedules	22
IV. REPRESENTATIONS AND WARRANTIES OF BUYER.	23
4.1    Organization and Good Standing	23
4.2    Authorization of Agreement	23
4.3    Conflicts; Consents of Third Parties	23
4.4    Litigation	24
4.5    Financial Capability	24
4.6    Buyer's Reliance	24
4.7    Financial Advisors	25
4.8    Solvency	24
4.9    Investment Intent	25





**TABLE OF CONTENTS**  
**(Continued)**

	<u>Page</u>
V. COVENANTS OF THE PARTIES.	25
5.1 Conduct of Business Prior to the Closing	25
5.2 Covenants Regarding Information	27
5.3 Employee Benefits.	27
5.4 Confidentiality	28
5.5 Public Announcements	29
5.6 Reasonable Best Efforts	30
5.7 Tax Matters	31
5.8 Use of Name	33
5.9 Insurance	33
5.10 Intercompany Accounts; Intercompany Arrangements	34
5.11 Termination of Guarantees	34
5.12 Payments Received	35
5.13 Further Actions	35
5.14 Intellectual Property	35
5.15 Business Covenants	36
5.16 Supplier Agreement	36
VI. CONDITIONS TO CLOSING.	37
6.1 Conditions to Obligations of Buyer and Seller	37
6.2 Conditions to Obligations of Buyer	37
6.3 Conditions to Obligations of Seller	38
6.4 Frustration of Closing Conditions	38
VII. TERMINATION.	38
7.1 Termination	38
7.2 Procedure and Effect of Termination	39
VIII. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS.	40
8.1 Survival of Representations, Warranties and Covenants	40
IX. MISCELLANEOUS.	40
9.1 Notices	40
9.2 Exhibits and Schedules	41
9.3 Entire Agreement; Amendments and Waivers	41
9.4 Severability	42
9.5 Binding Effect; Assignment	42
9.6 No Third-Party Beneficiaries	42
9.7 Fees and Expenses	42
9.8 Counterparts; Effectiveness	42
9.9 Interpretation	42
9.10 Governing Law	43
9.11 Forum; Service of Process	43
9.12 WAIVER OF JURY TRIAL	43
9.13 Specific Performance	44

**TABLE OF CONTENTS**  
**(Continued)**

	<u>Page</u>
9.14 Non-Recourse	44
9.15 Legal Representation	44
9.16 Release	45

This STOCK PURCHASE AGREEMENT, dated as of July 9, 2021 (this “**Agreement**”), is by and between Novanta Corporation, a Michigan corporation (“**Buyer**”) and Schneider Electric Holdings, Inc., a Delaware corporation (“**Seller**”).

WHEREAS, Seller owns all of the Shares of Schneider Electric Motion USA, Inc., a Connecticut corporation (the “**Company**”); and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Seller wishes to sell, convey, transfer and deliver to Buyer, and Buyer wishes to purchase from Seller, one hundred percent (100%) of the Shares.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

## **I. DEFINITIONS.**

1.1 **Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise:

“**Accounting Methodology**” means IFRS, as applied consistently with the accounting methods, policies, practices and procedures historically employed by Seller with respect to the Company; provided, that in the event of an inconsistency between IFRS and the accounting methods, policies, practices and procedures historically employed by Seller with respect to the Company, the accounting methods, policies, practices and procedures historically employed by Seller with respect to the Company shall prevail (including, for the avoidance of doubt, the historical methods, policies, practices, and procedures described in the report listed on Schedule 1.1(b)).

“**Affiliate**” (including, with its correlative meaning, “**Affiliated**”) means with respect to any Person, any Person controlling, controlled by or under common control with such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, “**control**” (including the terms “**controlling**”, “**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 otherwise.

“**Benefit Plan**” means, with respect to any Person, each compensation or employee benefit plan, scheme, program, policy, arrangement and contract (including any “employee benefit plan,” as defined in Section 3(3) of ERISA, whether or not subject to ERISA, and any bonus, deferred compensation, stock bonus, stock purchase, restricted stock, stock option or other equity-based arrangement, and any employment, termination, retention, bonus, change in control, vacation, retirement, pension, end-of-career indemnity, jubilee, long-service or severance plan, program, policy, arrangement, contract, or any collective bargaining agreement, unilateral commitment or binding practice concerning employees) for the benefit of any current or former officer, employee or director of such Person that is maintained or contributed to by such Person, any of its Subsidiaries or any of its ERISA Affiliates, or with respect to which any of them could incur material liability under the Code or ERISA or any similar non-U.S. law, but shall exclude Multiemployer Plans.

“**Business**” means the Company’s business of developing, manufacturing, marketing, selling, distributing, or representing Competitive Products.

“**Business Day**” means any day that is not a Saturday, Sunday, or other day on which commercial banks are required or authorized by Law to be closed in New York, New York.

“**Cash**” means cash, checks, money orders, marketable securities, short-term instruments, and other cash equivalents, and demand deposits or similar accounts.

“**CARES Act**” has the meaning set forth in this Section 1.1 (in the definition of Indebtedness).

“**Closing Company Cash**” means Company Cash as of the Effective Time.

“**Closing Company Indebtedness**” means Company Indebtedness as of the Effective Time.

“**Closing Net Working Capital**” means Net Working Capital as of the Effective Time; *provided* that, for purposes of clarity, such calculations shall be based exclusively on the facts and circumstances as they exist as of the Effective Time and shall exclude the effects of any event, act, change in circumstances or similar development arising or occurring thereafter.

“**Closing Unpaid Transaction Fees**” means Unpaid Transaction Fees as of the Effective Time. For the avoidance of doubt, any liabilities included as Closing Unpaid Transaction Fees shall not be included in Closing Net Working Capital or Closing Company Indebtedness.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company Benefit Plan**” means any Benefit Plan (a) that is, or as of the Closing Date will be, sponsored or maintained solely by the Company for the benefit of any current or former employee of any Company (or any dependent or beneficiary thereof), or (b) is designated as a Company Benefit Plan in Schedule 3.13(a).

“**Company Cash**” means Cash of the Company, as determined in accordance with the Accounting Methodology.

“**Company Indebtedness**” means the Indebtedness of the Company.

“**Compensation Deduction**” means, with respect to any Incentive Award Payment to an Affected Employee or former employee of any of the Company, an amount equal to 22.3% of such payment.

“**Competing Business**” means, with respect to a Person other than the Company, the business of developing, manufacturing, marketing, selling, distributing, or representing Competitive Products.

“**Competitive Products**” means low voltage products based on 2-phase stepper drive and stepper motor technology up to 9.2 newton meters being sold or developed by the Company as of the Closing Date.

“**Contract**” means any written contract, agreement, indenture, note, bond, mortgage, loan, instrument, lease (excluding the Real Property Lease), or license.

“**Copyrights**” has the meaning set forth in this Section 1.1 (in the definition of Intellectual Property).

**“Core Employee Benefit Plans”** means the employee benefits plans listed on Schedule 3.13(a) relating to medical, vision, dental, short term disability, long term disability, life and AD&D insurance, paid time off, paid family leave, care@work, and 401-k up to a 5% match.

**“Employee Tax Liability”** means any income Tax and social security contributions payable by an Affected Employee or former employee of the Company and for which Buyer or the Company is liable to account in connection with an Incentive Award Payment to an Affected Employee or former employee of the Company pursuant to Section 5.3(e).

**“Employer Tax Liability”** means the employer portion of any employment Taxes payable by Buyer or the Company in connection with an Incentive Award Payment to an Affected Employee or former employee of the Company pursuant to Section 5.3(e).

**“Enterprise Value”** means \$115,000,000.

**“Environmental Law”** means any applicable Law currently in effect relating to the protection of the environment, natural resources, or occupational health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), as each has been amended and the regulations promulgated pursuant thereto.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

**“Excluded Pre-Closing Taxes”** means Taxes imposed on or assessed against the Company with respect to a Straddle Period that are not specifically taken into account in Closing Net Working Capital or Closing Unpaid Transaction Fees.

**“Fraud”** means, with respect to any statement in any representation or warranty set forth in Article III or Article IV (as applicable), (a) the Person against whom an allegation of fraud has been made had actual knowledge that a fact provided by such party was inaccurate when such statement was provided, (b) such statement was provided with the intention to induce the other party to act or refrain from acting and (c) such statement is actually and detrimentally relied upon by the other party.

**“Governmental Entity”** means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission, or court, tribunal, or arbitral or judicial body (including any grand jury).

**“Government Official”** means any: (a) officer, employee, or other individual acting for or on behalf of any Governmental Entity or public international organization; or (b) holder of or candidate for public office, political party, or official thereof or member of a royal family, or any other individual acting for or on behalf of the foregoing.

“**Hazardous Substance**” means any substance that is listed, classified or regulated as a toxic or hazardous material, substance or waste or words of similar meaning or effect under any Environmental Law.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“**IFRS**” means International Financial Reporting Standards as of the date hereof.

“**Incremental Tax Amount**” means an amount equal to the amount by which (i) the Taxes that would be payable by Seller and its Affiliates with respect to the sale of the Shares after giving effect to the 338(h)(10) Election, assuming all related gains are taxed at the highest applicable marginal corporate income Tax rates, is greater than (ii) the Taxes that would have been payable by Seller and its Affiliates with respect to the sale of the Shares if the 338(h)(10) Election had not been made, assuming all related gains were taxed at the highest applicable marginal corporate income Tax rates; *provided that* for the avoidance of doubt, for purposes of calculating the Incremental Tax Amount the amount calculated under Section 5.7(i) shall not be considered as allocated to the Shares.

“**Indebtedness**” means, with respect to any Person, but without duplication, (a) all indebtedness of such Person for borrowed money, including any loan under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”), any government program established or expanded thereunder, related thereto or funded thereby or any other legislation enacted, any rule or regulation promulgated, or any other program established or expanded, by any Governmental Entity in connection with, or in response to, COVID-19, to the extent not repaid or forgiven (including the employer portion of any payroll Taxes that have been deferred pursuant to the CARES Act), (b) all obligations of such Person evidenced by notes, bonds or debentures (other than trade payables, accrued expenses and other similar Liabilities incurred in the ordinary course of business and included in Net Working Capital), (c) all capital lease obligations of such Person required to be classified as such under IFRS, (d) deferred rent, deferred compensation, deferred revenue and a pro rata portion of any bonus expected to be paid with respect to the 2021 fiscal year and (e) Excluded Pre-Closing Taxes. Notwithstanding the foregoing, Indebtedness shall not include (i) trade payables, undrawn letters of credit, performance or bid bonds or (ii) any items included in Net Working Capital or Transaction Fees.

“**Intellectual Property**” means all rights with respect to intellectual property anywhere in the world, including rights arising from or in respect of the following: (a) all patents, utility models and other rights to inventions, and applications therefor, including continuations, divisionals, continuations-in-part, provisional applications and patents issuing thereon and any reissues, reexaminations and extensions thereof (collectively, “**Patents**”), (b) all trademarks, service marks, trade names, service names, brand names, trade dress, logos, and Internet domain names, together with the goodwill associated with any of the foregoing, and all applications, registrations, renewals and extensions thereof (collectively, “**Marks**”), (c) all copyrights, works of authorship and registrations, applications, renewals and extensions thereof (collectively, “**Copyrights**”), and (d) all trade secrets, confidential information and know-how (collectively, “**Trade Secrets**”).

“**IT Systems**” means the hardware, computer software, data communications lines, network and telecommunications equipment, internet-related information technology infrastructure, wide area network and other information technology equipment, owned or controlled by the Company.

“**Law**” means any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or Order of any Governmental Entity.

**“Legal Proceeding”** means any judicial, administrative or arbitral action, suit or proceeding (public or private) by or before a Governmental Entity.

**“Liability”** means any debt, liability or obligation (whether absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, known or unknown, on- or off-balance sheet, or due or to become due) of every kind, nature and description, including all costs and expenses related thereto).

**“Liens”** means, with respect to any specified asset, any and all liens, encumbrances, charges, claims, equitable interests, mortgages, options, pledges, security interests, easements, encroachments, rights of first refusal or similar restrictions (other than those created under applicable securities laws).

**“Losses”** means any and all damages, judgments, awards, liabilities, losses, obligations, claims of any kind or nature, fines and costs and expenses (including reasonable fees and expenses of attorneys, auditors, consultants and other agents).

**“Marks”** has the meaning set forth in this Section 1.1 (in the definition of Intellectual Property).

**“Material Adverse Effect”** means any event, change, occurrence or effect that, when considered individually or together with any other event, change, occurrence or effect, has had a material adverse effect on the business, financial condition or results of operations of the Company, taken as a whole, other than any event, change, occurrence or effect arising out of, attributable to, or resulting from, alone or in combination, (a) earthquakes, hurricanes, floods, tornadoes, natural disasters, pandemics (including COVID-19) and any government measures (directives, orders or similar measures by any Governmental Entity) in response thereto, changes in global, national or regional political conditions (including any outbreak or escalation of hostilities or war or any act of terrorism), (b) changes in general economic, business, regulatory, political or market conditions or in national or global financial markets, including changes in the credit, debt or capital markets, (c) general changes or developments in any of the industries in which the Company operates, (d) changes in any applicable Law or accounting regulations or principles or interpretations thereof, (e) any actions required under this Agreement to obtain any approval or authorization under antitrust or competition Laws for the consummation of the transactions contemplated by this Agreement, (f) the announcement or pendency of this Agreement and the transactions contemplated by this Agreement, including the initiation of litigation by any Person with respect to this Agreement, and including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners or employees of the Company due to the announcement and performance of this Agreement or the identity of the parties to this Agreement, or the performance of this Agreement and the transactions contemplated hereby, including compliance with the covenants set forth herein, (g) any action taken by Seller or the Company which is required by this Agreement, (h) any actions taken (or omitted to be taken) at the request of Buyer, (i) the failure of the Company to meet any of its internal projections, provided that any such event, change, occurrence or effect causing or contributing to any such failure to meet projections or forecasts may constitute a Material Adverse Effect and may be taken into account in determining whether a Material Adverse Effect has occurred, (j) matters of which Buyer has actual (and not imputed or constructive) knowledge on the date hereof, or (k) the failure to take any specific action expressly prohibited by this Agreement and with respect to which Buyer declined to consent pursuant to Section 5.1 (*provided*, that any adverse effects resulting from matters described in any of the foregoing clauses (a), (b), (c) or (d) may be taken into account in determining whether there is or has been a Material Adverse Effect to the extent, and only to the extent, that they have a disproportionate effect on the Company relative to other participants in the industries or geographies in which the Company operates). For the avoidance of doubt, a Material Adverse Effect shall be measured only against past performance of the Company, and not against any forward-looking statements, financial projections or forecasts of the Company.



**“Material Customers”** means the largest ten (10) customers of the business of the Company by revenue received during the fiscal year ended on December 31, 2020.

**“Material Suppliers”** means the largest ten (10) suppliers to the business of the Company by expenditures made during the fiscal year ended on December 31, 2020.

**“Multiemployer Plan”** means a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA.

**“Net Working Capital”** means, as of any date, the excess of (a) the current assets of the Company in the line item categories set forth on Schedule 1.1(a) as of such date (it being understood that, for purposes of this definition, the term “current assets” shall not include Cash or deferred income Tax assets) over (b) the current Liabilities of the Company in the line item categories set forth on Schedule 1.1(a) as of such date (it being understood that, for purposes of this definition, the term “current liabilities” shall not include any Indebtedness, Transaction Fees, deferred Tax Liabilities and income Tax Liabilities), in each case, determined in accordance with the Accounting Methodology.

**“Order”** means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Entity.

**“Patents”** has the meaning set forth in this Section 1.1 (in the definition of Intellectual Property).

**“Permit”** means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Entity.

**“Permitted Liens”** means (a) mechanics’, carriers’, or workmen’s, repairmen’s or similar Liens (i) which are not yet due and payable and which are not reasonably expected to, individually or in the aggregate, materially impair the Company or (ii) that are being contested in good faith and for which sufficient reserves have been established on the Financial Statements in accordance with IFRS; (b) Liens for Taxes, assessments and any other governmental charges which are not due and payable or which may hereafter be paid without penalty or which are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established on the Financial Statements in accordance with IFRS; (c) zoning, entitlement, conservation restriction and other land use and environmental regulations promulgated by Governmental Entities; (d) any other Liens that will be terminated at or prior to Closing in accordance with this Agreement; (e) Liens relating to operating leases of equipment and (f) with respect to real property, easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case, which do not interfere in any material respect with the operation of the business of the Company.

**“Person”** means a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, or other entity or organization.

**“Post-Closing Tax Period”** means any Tax period beginning after the Closing Date and, with respect to any Tax period beginning before and ending after the Closing Date, the portion of such Tax period beginning after the Closing Date.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date and, with respect to any Tax period beginning before and ending after the Closing Date, the portion of such Tax period ending on the Closing Date.



**“Present Fair Saleable Value”** means the amount that may be realized if the assets of the applicable Person (including goodwill) are sold as an entirety with reasonable promptness in an arms-length transaction under present conditions for the sale of comparable business enterprises.

**“Proceeding”** means all claims or causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement, or the negotiation and performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in connection with this Agreement or as an inducement to enter this Agreement).

**“Restricted Territory”** means the United States of America, Italy, Germany, the Netherlands and France.

**“Seller Benefit Plan”** means any Benefit Plan (a) that is, or as of the Closing Date will be, sponsored or maintained by Seller or any of its Affiliates for the benefit of any current or former employee of the Company (or any dependent or beneficiary thereof) or (b) in which any current or former employee of the Company participates, in the case of each of (a) and (b) other than the Company Benefit Plans.

**“Seller’s Knowledge”** or words of similar effect means the actual (and not imputed or constructive) knowledge, without any duty of inquiry or investigation, of the individuals set forth on Schedule 1.1(c).

**“Straddle Period”** means a taxable period which includes the Closing Date but does not end on the Closing Date.

**“Subsidiary”** means, with respect to any Person, any other Person of which more than 50% of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by such first Person.

**“Supplier Agreement”** means a supply agreement, arrangement or transition services arrangement with the Company’s largest supplier based on expenditures of the Company during the fiscal year ended on December 31, 2020 (**“Supplier No. 1”**).

**“Supplier No. 1”** has the meaning set forth in this Section 1.1 (in the definition of Supplier Agreement).

**“Target Net Working Capital”** means \$4,907,009.

**“Tax”** means (a) any U.S. federal, state, local, or foreign income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, withholding, payroll, employment, social security (or similar), unemployment, disability, employee or other withholding, excise, severance, stamp, occupation, premium, property, unclaimed property or escheat, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, and however denominated, together with any interest, fine, penalty, addition to tax or additional amount imposed by any Taxing Authority with respect thereto or with respect to any Tax Return; (b) any Liability for any of amount described in clause (a) above whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of applicable Law; and (c) any Liability for any amount described in clauses (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other Contract to indemnify any Person for taxes, except for Contracts entered into in the ordinary course of business the primary purpose of which is not taxes.

“**Tax Gross-Up Amount**” means the amount equal to (i) the Incremental Tax Amount plus (ii) the amount of Taxes that would be payable by Seller and its Affiliates with respect to receipt of the Incremental Tax Amount assuming the Incremental Tax Amount were taxed at the highest applicable marginal corporate income Tax rates.

“**Tax Return**” means any return, declaration, report, claim for refund, statement, information return or statement or other document required to be filed with respect to Taxes including any schedule thereto, and any amendment thereof.

“**Taxing Authority**” means any agency or political subdivision of any foreign, federal, state, local or municipal Governmental Entity with the authority to impose any Tax.

“**Trade Secrets**” has the meaning set forth in this Section 1.1 (in the definition of Intellectual Property).

“**Transaction Fees**” means all fees, costs and expenses incurred by the Company in connection with this Agreement or the consummation of the transactions contemplated hereby, including: (a) all brokers’, finders’ or investment bankers’ fees incurred by or on behalf of the Company in connection with the negotiation, preparation, execution and consummation of the transactions contemplated by this Agreement; (b) fees and expenses of legal counsel or other professional advisors incurred by or on behalf of the Company in connection with this Agreement and the consummation of the transactions contemplated hereby; (c) including any Incentive Award Payments, all transaction, change in control, or similar bonuses, retention bonuses, severance or termination payments payable by the Company to employees solely as a result of the consummation of the transactions contemplated hereby (whether paid or provided for following the Closing Date), other than those on Schedule 5.3(e) and which seller remits payment for pursuant to Section 5.3(e).

“**Treasury Regulations**” means the regulations promulgated under the Code, as such regulations may be amended.

“**Unpaid Transaction Fees**” means the amount of any Transaction Fees not paid as of the Effective Time.

“**Working Capital Schedule**” means the example calculation of Net Working Capital attached hereto as Schedule 1.1(a).

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
338(h)(10) Election	5.7(i)
Affected Employee	5.3(a)
Agreement	Preamble
Balance Sheet	3.6
Balance Sheet Date	3.6
Buyer	Preamble
Buyer Plan	5.3(b)
Buyer Policies	5.9(b)
Closing	2.2(a)
Closing Balance Sheet	2.3(b)(i)

<u>Term</u>	<u>Section</u>
Closing Date	2.2(a)
Closing Statement	2.3(b)(i)
Company	Recitals
Company Confidential Information	5.4(b)
Confidentiality Agreement	5.4(a)
Covered Matter	9.10
Disclosure Schedule	Article III
Dispute Notice	2.3(b)(ii)
Disputed Item	2.3(b)(ii)
Effective Time	2.2(a)
Environmental Permits	3.17(a)
Estimated Closing Balance Sheet	2.3(a)
Estimated Closing Statement	2.3(a)
Estimated Purchase Price	2.3(a)
Excluded Marks	5.8
Financial Statements	3.6
Incentive Award Payments	5.3(e)
Independent Accountant	2.3(b)(ii)
Interim Financial Statements	3.6
Leased Real Property	3.10
Material Contracts	3.12(a)
OFAC	3.16(d)
Outside Date	7.1(b)(i)
Post-Closing Representation	9.15
Purchase Price	2.1
Real Property Lease	3.10
Released Parties	9.16
Releasing Parties	9.16
Restricted Parties	5.15(a)
Relevant Persons	3.16(b)
Representatives	3.24
Resolution Period	2.3(b)(ii)
Seller	Preamble
Seller Claims Made Policies	5.9(b)
Seller Confidential Information	5.4(c)
Seller Group	9.15
Seller Guarantees	5.11
Shares	3.4
Solvent	4.8
Sublicensable	5.14
Transfer Taxes	5.7(e)
Transition Services Agreement	6.2(e)
Unresolved Items	2.3(b)(ii)
Waiving Parties	9.15
WARN	5.3(d)
Year-End Financial Statements	3.6

## II. SALE AND PURCHASE OF SHARES.

2.1 Sale and Purchase of Shares. Subject to the terms and conditions hereof, at the Closing, Seller shall sell, convey, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all legal and beneficial right, title and interest in and to all Shares free and clear of all Liens for an aggregate purchase price equal to (a) Enterprise Value, *plus* (b) the Closing Company Cash, *minus* (c) the Closing Company Indebtedness, *minus* (d) the Closing Unpaid Transaction Fees, *plus* (e) the excess, if any, of the Closing Net Working Capital over the Target Net Working Capital, *minus* (vi) the amount, if any, by which the Closing Net Working Capital is less than the Target Net Working Capital, *plus* (vii) any amount due pursuant to Section 5.7(i) (if any) (the “**Purchase Price**”), subject to adjustment as set forth in Section 2.3.

### 2.2 Closing.

(a) The closing of the sale and purchase of the Shares (the “**Closing**”) shall take place remotely by the exchange of funds, documents and signatures (or their electronic counterparts), on the last day of the calendar month (or, if such day is not a Business Day, the following Business Day) in which the conditions set forth in Article VI have been satisfied or waived by the party or parties entitled to the benefit of such conditions (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing by the party or parties entitled to the benefit of such conditions) (unless the last day of the calendar month is within five Business Days of the day on which such conditions have been so satisfied or waived, then the Closing shall occur on the last calendar day of the month following the month in which such conditions have been so satisfied or waived), or at such other time or place as the parties may mutually agree. The date on which the Closing actually occurs is referred to hereinafter as the “**Closing Date**.” The Closing shall be deemed effective as of 12:01 a.m. (Eastern time) on the Closing Date (the “**Effective Time**”).

#### (b) At the Closing:

(i) Seller shall deliver, or cause the Company to deliver, to Buyer:

A. certificates representing all of the Shares, in each case, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank, and bearing or accompanied by all requisite stock transfer stamps or, in the case of Shares that are not evidenced by certificates, evidence of transfer on the applicable share transfer register of the Company;

B. the officer’s certificate required pursuant to Section 6.2(d), in form and substance reasonably satisfactory to Buyer, duly executed by an authorized officer of Seller;

C. the resignations of all officers and directors of the Company;

D. a certificate meeting the requirements of Section 1.1445-2(b) of the Treasury Regulations to the effect that Seller is not a “foreign person” within the meaning of Section 1445 of the Code and the Treasury Regulations thereunder.

(ii) Buyer shall deliver, or cause to be delivered:

A. to Seller, by wire transfer of immediately available funds to an account that is designated at least five Business Days prior to the Closing Date by Seller, an amount equal to the Estimated Purchase Price;

B. to the parties designated by Seller, the amounts set forth on the Estimated Closing Balance Sheet to satisfy the Closing Unpaid Transaction Fees; and

C. to Seller, the officer's certificate required pursuant to Section 6.3(c), in form and substance reasonably satisfactory to Seller, duly executed by an authorized officer of Buyer.

## 2.3 Purchase Price Adjustment.

(a) Pre-Closing Adjustment. Not less than three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer a statement (the “**Estimated Closing Statement**”) containing an estimated balance sheet of the Company as of the Effective Time (the “**Estimated Closing Balance Sheet**”) and good faith estimates or calculations, as applicable, in reasonable detail, of (i) Closing Company Cash, (ii) Closing Company Indebtedness, (iii) Closing Unpaid Transaction Fees, (iv) Closing Net Working Capital derived from the Estimated Closing Balance Sheet and (v) the Purchase Price pursuant to Section 2.1 based on the amounts described in clauses (i) through (iv) of this Section 2.3(a) (the “**Estimated Purchase Price**”). The Estimated Closing Statement shall be prepared in accordance with the Accounting Methodologies, the provisions of this Agreement and the Working Capital Schedule.

### (b) Post-Closing Adjustment.

(i) As promptly as reasonably practicable, but no later than forty-five (45) following the Closing Date, Buyer shall prepare and deliver to Seller a statement (the “**Closing Statement**”) containing an unaudited balance sheet of the Company as of the Effective Time (the “**Closing Balance Sheet**”) and calculations, in reasonable detail, of (i) Closing Company Cash, (ii) Closing Company Indebtedness, (iii) Closing Unpaid Transaction Fees, (iv) Closing Net Working Capital derived from the Closing Balance Sheet, (v) the Purchase Price and (vi) the amount, if any, payable pursuant to clause (iv) of this Section 2.3(b)(i). The Closing Statement shall be prepared in good faith, in accordance with the Accounting Methodologies, the provisions of this Agreement and the Working Capital Schedule.

(ii) In the event Seller has any objections to all or any portion of the Closing Statement, Seller shall, within 30 days of Seller's receipt of the Closing Statement, deliver to Buyer a written notice (a “**Dispute Notice**”) specifying in reasonable detail each item or amount that Seller disputes (each, a “**Disputed Item**”), the amount in dispute for each Disputed Item and the reasons supporting Seller's positions. Seller shall be deemed to have agreed with all other items and amounts contained in the Closing Statement delivered pursuant to Section 2.3(b)(i) other than the Disputed Items. During the 30 days immediately following Buyer's receipt of a Dispute Notice (the “**Resolution Period**”), Buyer and Seller shall seek in good faith to resolve any differences that they may have with respect to the matters specified in the Dispute Notice. If Seller and Buyer reach agreement with respect to any such Disputed Items, Buyer shall promptly revise the Closing Statement to reflect such agreement. If Buyer and Seller are unable to resolve all of the Disputed Items during the Resolution Period, then Buyer and Seller shall jointly engage and submit the unresolved Disputed Items (the “**Unresolved Items**”) to a nationally recognized independent firm qualified as serving as an accounting expert as to which Seller and Buyer mutually agree (or in the event the parties cannot agree, an accounting expert as chosen by the American Arbitration Association) (the “**Independent Accountant**”) for resolution in accordance with the terms of this Section 2.3(b). The Independent Accountant shall act as an accounting expert to determine, based solely on presentations by

Buyer and Seller and not by independent review, only the Unresolved Items still in dispute and shall be limited to those adjustments, if any, required to be made for the Closing Statement to comply with the provisions of this Agreement. Buyer and Seller shall use their reasonable best efforts to cause the Independent Accountant to issue its written determination regarding the Unresolved Items within 30 days after such items are submitted for review. The Independent Accountant shall make a determination with respect to the Unresolved Items only and in a manner consistent with this Section 2.3(b) and the Accounting Methodologies and the Working Capital Schedule, and in no event shall the Independent Accountant's determination of any of the Unresolved Items be for an amount that is outside the range of Buyer's and Seller's disagreement for such Unresolved Item. Each party shall use its reasonable best efforts to furnish to the Independent Accountant such work papers and other documents and information pertaining to the Unresolved Items as the Independent Accountant may reasonably request and shall be afforded an opportunity to discuss the Unresolved Items with the Independent Accountant at such hearing as the Independent Accountant shall request or permit. The determination of the Independent Accountant shall be final, binding and conclusive upon Buyer and Seller absent manifest error, and Buyer shall promptly revise the Closing Statement to reflect such determination upon receipt thereof. The fees, expenses and costs of the Independent Accountant shall be borne by Buyer and Seller in the same proportion as the aggregate amount of the Unresolved Items that is unsuccessfully disputed by each (as determined by the Independent Accountant) bears to the total amount of the Unresolved Items submitted to the Independent Accountant. For example, if the total amount of the Unresolved Items submitted to the Independent Accountant for resolution in accordance with the terms of this Section 2.3(b) is \$1,000, the aggregate amount of the Unresolved Items resolved by the Independent Accountant in favor of Seller is \$600 and the total amount of fees, expenses and costs of the Independent Accountant in connection with such dispute is \$100, then Buyer shall bear \$60 of such amount and Seller shall bear \$40 of such amount.

(iii) Each party shall use its reasonable best efforts to provide promptly to the other party all information and reasonable access to employees and representatives as such other party shall reasonably request in connection with review of the Estimated Closing Statement or the Closing Statement, as the case may be, including all work papers of the accountants who audited, compiled or reviewed such statements or notices (subject to each party and its representatives entering into any customary undertakings required by the other party's accountants in connection herewith), and shall otherwise cooperate in good faith with such other party to arrive at a final determination of the Closing Statement.

(iv) Within five Business Days after the Closing Statement is finalized pursuant to this Section 2.3(b), (A) if the Purchase Price exceeds the Estimated Purchase Price, Buyer shall pay to Seller an amount equal to such excess or (B) if the Purchase Price is less than the Estimated Purchase Price, Seller shall pay to Buyer an amount equal to such shortfall. Any amount to be paid by Buyer to Seller, or by Seller to Buyer, as applicable, pursuant to this Section 2.3(b) shall be paid by wire transfer of immediately available funds to an account designated by the receiving party and treated as an adjustment to the Purchase Price for tax reporting purposes.

### **III. REPRESENTATIONS AND WARRANTIES OF SELLER.**

Except as set forth on the disclosure schedule delivered by Seller to Buyer simultaneously with the execution of this Agreement (the “**Disclosure Schedule**”), Seller represents and warrants to Buyer as follows:

3.1 Organization and Good Standing. Each of Seller and Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to carry on its business as now conducted. Each of Seller and the Company is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in

which the conduct of its business or the ownership of its properties, requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not reasonably be expected to have a Material Adverse Effect.

3.2 Authorization of Agreement. Seller has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by Seller have been duly authorized and approved by all requisite corporate or other action of Seller. This Agreement has been duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto) this Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

3.3 Conflicts; Consents of Third Parties.

(a) Except (i) as required by the HSR Act and (ii) as set forth on Schedule 3.3(a), neither the consummation of the transactions contemplated hereby nor compliance by Seller or the Company with any of the provisions hereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under, any provision of (i) the organizational documents of Seller or the Company; (ii) any Material Contract or material Permit to which Seller or the Company is a party or by which any of the material properties or assets of Seller or the Company are bound; (iii) any material Order of any Governmental Entity applicable to Seller or the Company, or by which any of the material properties or assets of Seller or the Company are bound; (iv) any applicable Law; or (v) the Real Property Lease, except in the case of clauses (ii)-(iv) where such conflict, violation, default or right of termination or cancellation would not reasonably be expected to have a Material Adverse Effect.

(b) Except (i) as required by the HSR Act and (iii) as set forth on Schedule 3.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Entity is required on the part of Seller or the Company in connection with the execution and delivery of this Agreement or the compliance by Seller or the Company with any of the provisions hereof, or the consummation of the transactions contemplated hereby, except where the failure to obtain such consent, waiver, approval, Order, Permit, authorization or notice would not reasonably be expected to have a Material Adverse Effect.

3.4 Capitalization. The capital stock of the Company consists of 20,000 authorized shares of common stock, of which 12,688 shares are issued and outstanding ("**Shares**"). All of the issued and outstanding Shares are owned by Seller, free and clear of all Liens, and are duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. There are no subscriptions, options, convertible securities, calls, rights, warrants or other agreements, claims or commitments of any nature whatsoever, obligating the Company to issue, transfer, deliver, sell, purchase, return or redeem, or cause to be issued, transferred, delivered, sold, purchased, returned or redeemed, any capital stock or other securities of the Company.



3.5 Subsidiaries. The Company does not have any Subsidiaries. The Company does not directly or indirectly own any equity, joint venture or similar interest in, or any interest convertible or exchangeable or exercisable for any equity or similar interest in, any other Person.

3.6 Financial Statements. Seller has made available to Buyer copies of (i) the unaudited balance sheets of the Company as at December 31, 2019 and December 31, 2020 and the related unaudited statements of income of the Company for the years then ended (such unaudited statements, including the related notes and schedules thereto, are referred to herein as the “**Year-End Financial Statements**”) and (ii) the unaudited balance sheets of the Company as at April 30, 2021 and the related unaudited statements of income of the Company for the four-month period then ended (such unaudited statements are referred to herein as the “**Interim Financial Statements**” and together with the Year-End Financial Statements, the “**Financial Statements**”). Except as set forth in the notes thereto or as disclosed in Schedule 3.6, each of the Financial Statements has been prepared in accordance with IFRS consistently applied and presents fairly in all material respects the financial position, results of operations of the Company as at the dates and for the periods indicated therein; *provided*, that the Financial Statements do not contain notes or other presentation items and the Interim Financial Statements are subject to normal year-end adjustments.

For the purposes hereof, the unaudited balance sheet of the Company as at April 30, 2021 is referred to as the “**Balance Sheet**” and April 30, 2021 is referred to as the “**Balance Sheet Date**”.

3.7 No Undisclosed Liabilities. Except as set forth on Schedule 3.7, the Company does not have any material Liabilities of any kind that would have been required to be reflected in, reserved against or otherwise described on the Balance Sheet or in the notes thereto in accordance with IFRS and were not so reflected, reserved against or described, other than (a) Liabilities incurred in the ordinary course of business after the Balance Sheet Date, (b) Liabilities for fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby and (c) Liabilities reflected on or reserved against in the Financial Statements.

3.8 Absence of Certain Developments. Except as contemplated by this Agreement or as set forth on Schedule 3.8, from December 31, 2020 to the date of this Agreement, (a) the Company has conducted its business only in the ordinary course of business, (b) there has not been any event, change, occurrence or circumstance that has had a Material Adverse Effect and (c) the Company has not taken any action that would require notice under Section 5.1, if taken between the date of this Agreement and the Closing.

3.9 Taxes. Except as set forth on Schedule 3.9(a):

(a) The Company has timely filed (or has had timely filed on its behalf) all Tax Returns required to be filed by or with respect to it (taking into account for this purpose any extensions), and all material Taxes required to be paid by it have either been paid by it or are reflected in accordance with IFRS as a reserve for Taxes on the most recent Financial Statements.

(b) All material Taxes required to be withheld by the Company have been withheld and, to the extent required, have been timely paid and properly reported to the proper Taxing Authority.

(c) The Company (i) is not a party to or bound by any Tax allocation, sharing or indemnity agreement or arrangement the principal purpose of which is to allocate or share liability for Taxes or a closing agreement with respect to Taxes, or (ii) has no outstanding agreements, consents or waivers extending the statutory period of limitations applicable to the payment or assessment of any Taxes.



(d) There are and have been (i) no claims, deficiencies or assessments of Taxes asserted or threatened in writing by any Taxing Authority with respect to the Company, and (ii) no audits or examinations of any Taxes or Tax Returns relating to the Company and no such audit or examination is threatened in writing.

(e) No written claim has ever been received with respect to the Company from a Taxing Authority in a jurisdiction where the Company does not file a Tax Return that the Company may be subject to Tax by such jurisdiction. The Company is and always has been resident only in its country of incorporation for income Tax purposes and the Company has no branch or permanent establishment in a country other than its country of incorporation.

(f) There are no Tax Liens upon any property or assets of the Company other than for Taxes not yet due and payable.

(g) The Company has been neither a “distributing corporation” nor a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code and occurring during the two (2) years prior to the date of this Agreement.

(h) The Company has not participated in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2) (or any analogous or similar provision of state, local or foreign Law).

(i) The Company will not be required to include any item of income in taxable income or to exclude any deduction, in any Post-Closing Tax Period, as a result of (1) a change in method of accounting under Section 481 of the Code made in a taxable period ending prior to the Closing Date, (2) any installment sale or open transaction disposition made on or prior to the Closing Date, (3) any intercompany transaction or transaction entered into on or prior to the Closing Date and subject to Treasury Regulation Section 1.1502-13 or any excess loss account in existence on or prior to the Closing Date and subject to Treasury Regulation Section 1.1502-19, (4) any deferred revenue or any prepaid amount received on or prior to the Closing Date, (5) the application of Section 951 or Section 951A of the Code with respect to income earned or recognized or payments received on or prior to the Closing Date, or (6) any agreement, contract, arrangement or plan in existence as of the Closing Date that could result in the payment of (i) any “excess parachute payment” within the meaning of Code §280G (or any corresponding provision of state, local, or non-U.S. Tax law) or (ii) any amount that will not be fully deductible as a result of Code §162(m) (or any corresponding provision of state, local, or non-U.S. Tax law).

3.10 **Real Property.** The Company does not own any real property. Schedule 3.10 sets forth a complete list of all Contracts related to real property leased by the Company (collectively, the “**Real Property Lease**” and such real property, the “**Leased Real Property**”). Except for the Leased Real Property, the Company has no interest in real property. There are no subleases, license agreements, occupancy agreements or any similar agreements with respect to the Leased Real Property. Except as set forth on Schedule 3.10, no consent of any party is required by the terms of the Real Property Lease in connection with the transactions contemplated hereby. The Company has not received any written notice, nor has the Company delivered any written notice, of any default or event that with notice or lapse of time, or both, would constitute a default by the Company or the landlord under the Real Property Lease. Seller has delivered to the Buyer a correct and complete copy of the Real Property Lease (including all amendments thereto, material correspondence, and similar documents). The Real Property Lease is legal, valid, binding, enforceable and in full force and effect. The Leased Real Property is being operated by the Company in all material respects in accordance with all applicable Laws.

### 3.11 Intellectual Property.

(a) Schedule 3.11(a) sets forth a complete and accurate list of all issued Patents, pending Patent applications, registered Marks, pending applications for registration of Marks, registered Copyrights and pending applications for registration of Copyrights owned or filed by the Company, including, for each item, (i) the record owner of such item, (ii) the jurisdiction or domain name registrar in which such item has been issued or registered or is pending and (iii) the issuance, registration and application numbers and dates of such item, and domain name expiration date, as applicable. All required renewal and other official registry fees, and reasonable steps required for the maintenance of, any items listed on Schedule 3.11(a) as of the date hereof have been paid or taken, as applicable.

(b) Except as set forth on Schedule 3.11(b), the Company owns or has valid licenses to use all Intellectual Property used by it in the conduct of its business; *provided, however*, that the representation and warranty in this Section 3.11(b) shall not constitute or be deemed or construed as any representation or warranty with respect to infringement, misappropriation or violation of any Intellectual Property. The Company is the exclusive owner of all right, title and interest in and to all of the Intellectual Property that it owns or purports to own, including the Intellectual Property set forth on Schedule 3.11(a), free and clear of all Liens. Except as set forth on Schedule 3.11(b), all such Intellectual Property is subsisting, valid and, to the Seller's Knowledge, enforceable; the Company is not subject to or bound by any outstanding Order or Contract restricting the use, licensing or other exploitation of such Intellectual Property; and there are no pending or, to the Seller's Knowledge, threatened Legal Proceedings with respect to any such Intellectual Property. The Company and, to the Seller's Knowledge, any other party or parties to any Company license agreement, is in compliance with all applicable licenses of Intellectual Property in all material respects.

(c) Except as set forth on Schedule 3.11(c), (i) to the Seller's Knowledge, neither the conduct by Company of its business nor the making, use, offer for sale, sale or importation by the Company of any products and services of the Company infringes, constitutes or results in a misappropriation of or violates any Intellectual Property of any Person, and (ii) the Company has not received any written or, to the Seller's Knowledge, oral, notice alleging that the Company has infringed, misappropriated or violated any Intellectual Property of any Person or challenging the ownership, validity or enforceability of any Intellectual Property owned by the Company, which notice has not been resolved to the reasonable satisfaction of the Company.

(d) Except as set forth on Schedule 3.11(d), to the Seller's Knowledge, no Person is infringing, misappropriating or violating any Intellectual Property owned by the Company.

(e) The Company has taken commercially reasonable measures to protect the confidentiality of the Trade Secrets owned by the Company.

(f) Except as set forth on Schedule 3.11(f), each current and former employee of the Company, and all other Persons who have created any portion of, or otherwise would have any rights in or to, any Intellectual Property developed for the Company or owned or purported to be owned by the Company have entered into written agreements that assign to the Company all of such Person's rights in and to Intellectual Property created, conceived, or otherwise developed by such Person in the scope of work for the Company or owned or purported to be owned by the Company, or the Company owns such Intellectual Property pursuant to applicable Law. No software that is subject to any open source license (*e.g.*, a license meeting the Open Source Definition promulgated by the Open Source Initiative) has been included, incorporated or embedded in, linked to, combined or distributed with or used in the delivery, or provision of any of the Company's proprietary software in a manner that requires licensing of Company Patents or requires such proprietary software to be licensed or distributed (i) in a form other than executable

or object code (e.g., in source code form); (ii) under terms that permit redistribution, reverse engineering, or creation of derivative works or other modification of any of the proprietary software; or (iii) without a license fee.

(g) Except as set forth on Schedule 3.11(g), all IT Systems are sufficient for the conduct of the Company's business as currently conducted and in a good state of maintenance and repair (ordinary wear and tear excepted) and are adequate and suitable for the purposes for which they are presently being used. The Company has implemented, maintained and complies with commercially reasonable written security, business continuity and backup and disaster recovery plans and procedures. Except as set forth on Schedule 3.11(g), to the Seller's Knowledge, there have been no material breaches, security incidents, misuse of, or unauthorized access to the IT Systems.

### 3.12 Material Contracts.

(a) Schedule 3.12(a) sets forth all of the following Contracts to which the Company is a party or by which it is bound, as of the date hereof, other than (x) Contracts in connection with the transactions contemplated by this Agreement, (y) purchase orders or statement of works entered into in the ordinary course of business and (z) Contracts which can be terminated by the Company, without penalty, upon notice of 90 days or less (collectively, the "**Material Contracts**"):

(i) any Contract for the sale of any assets of the Company, other than in the ordinary course of business, for consideration in excess of \$200,000;

(ii) any Contract relating to an acquisition by the Company of an operating business or the capital stock of any other Person;

(iii) any Contract relating to the incurrence of Indebtedness, the making of any loan involving amounts in excess of \$200,000 or the imposition of a Lien other than a Permitted Lien on the material assets of the Company;

(iv) any Contract, other than a Company Benefit Plan, in which the Company paid an amount in cash, goods, services or materials of \$200,000 or more during the 2020 calendar year;

(v) any Contract, other than a Company Benefit Plan, in which the Company received, an amount in cash, goods, services or materials of \$200,000 or more during the 2020 calendar year;

(vi) any Contract (A) containing any covenant limiting in any respect the right of any the Company to engage in any line of business, to compete with any Person in any line of business or to compete with any Person or the manner or locations in which any of them may engage, (B) prohibiting or limiting the right of the Company to make, sell or distribute any products or services or (C) that requires the Company (or, after the Closing, Buyer or its controlled Affiliates) to deal exclusively with any Person or group of related Persons;

(vii) any Contract: (A) pursuant to which another Person is granted a license to material rights to Intellectual Property; or (B) pursuant to which a third party (1) grants to the Company a license to material third-party Intellectual Property (excluding non-negotiated "shrink wrap," "click wrap" or "off the shelf" software licenses that are generally commercially available) or (2) assigns to the Company any material Intellectual Property (other than any Contract with

employees (or independent contractors or consultants in the role of developing Intellectual Property) of the Company);

(viii) any Contract for joint ventures, strategic alliances, or partnerships;

(ix) all Tax sharing and similar Contracts the principal purpose of which is to allocate or share liability for Taxes or a closing agreement with respect to Taxes; and

(x) any Contract with a Material Customer or a Material Supplier.

(b) The Company is not in breach or default under any such Material Contract, except for such breaches or defaults that would not reasonably be expected to have a Material Adverse Effect. To Seller's Knowledge, (i) each such Material Contract is a legal, valid and binding obligation of the Company and is in full force and effect (except to the extent subject to, and limited by, applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar laws affecting the enforcement of creditors' rights generally and general equitable principles), (ii) as of the date hereof, no other party to any Material Contract is (with or without the lapse of time or the giving of notice, or both) in breach of or in default under any of the Material Contracts except for such breaches or defaults that would not reasonably be expected to have a Material Adverse Effect, and (iii) no party to any of the Material Contracts has exercised or threatened in writing to exercise any termination rights with respect to any such Material Contract. Except as set forth on Schedule 3.12(b), copies of each of the Material Contracts listed on Schedule 3.12(a), together with the amendments thereto, have been made available to Buyer, except that any purchase orders or statements of work entered into pursuant to a master service Contract or similar master Contract have not been made available to Buyer; *provided* that, for the avoidance of doubt, each such master service Contract or similar master Contract that constitutes a Material Contract has been made available to Buyer.

### 3.13 Employee Benefit Plans.

(a) Schedule 3.13 lists all material Seller Benefit Plans and, separately, all material Company Benefit Plans. With respect to each material Company Benefit Plan, Seller has made available to Buyer complete and correct copies (as applicable) of: (i) the plan document, as amended from time to time, and any related trust agreements, insurance contracts or other funding vehicles and all amendments thereto; (ii) the most recent determination or opinion letter provided by a Governmental Entity and any currently pending application to a Governmental Entity for a determination letter; (iii) the most recent summary plan description or other written summary provided to participants thereof; and (iv) all material notices of or correspondence with any Governmental Entity issued to the Company relating to such Company Benefit Plan. Seller has made available to Buyer written summaries of the material terms of each Core Employee Benefit Plan reasonably sufficient for Buyer to comply with the terms of Section 5.3(a).

(b) Each Seller Benefit Plan intended to be qualified under Section 401(a) of the Code or otherwise receive favorable Tax treatment under applicable foreign Tax Law, and the trust (if any) forming a part thereof, has been determined by the applicable Governmental Entity to be so qualified, such determination has not been revoked as of the date hereof and, to the Seller's Knowledge, there are no existing circumstances or events that would reasonably be expected to result in any revocation of, or a change to, such determination.

(c) Each Company Benefit Plan and, with respect to current and former employees of the Company, each Seller Benefit Plan has been maintained, operated, funded and accounted for in all material respects in accordance with its terms, applicable Law and any applicable collective bargaining agreements. Neither Seller nor any of its Affiliates has engaged in any non-exempt "prohibited transaction"

(within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Seller Benefit Plan or Company Benefit Plan for which the Company would reasonably be expected to have any material liability. No condition exists that presents a material risk to any of the Company of having any payment obligation in respect of any Liability under Title IV of ERISA or under Section 412 or Section 430 of the Code or any applicable similar Law (including, in each case, on account of being an ERISA Affiliate of any Person).

(d) Except as would not reasonably be expected to result in material liability to the Company, during the last two years the Company has timely made all required contributions and paid all premiums in respect of all Company Benefit Plans and Seller Benefit Plans.

(e) The Company does not sponsor, maintain or contribute to, and has not, within the preceding six years, maintained or sponsored any Seller Benefit Plan or Company Benefit Plan that is an “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) that is subject to Title IV of ERISA or Section 412 or 430 of the Code or that is a defined benefit pension plan. No Liability under Title IV of ERISA has been incurred or is expected to be incurred by Seller or any of its ERISA Affiliates that has not been satisfied in full, and no condition exists that could be expected to result in Seller or any of its ERISA Affiliates incurring such Liability on or prior to the Closing. “ERISA Affiliate” means any Person, trade or business that, together with the Company, would be deemed a single employer under Section 414 of the Code or Section 4001 of ERISA.

(f) Other than routine claims for benefits made in the ordinary course of business, there are no pending or, to the Seller’s Knowledge, threatened litigation or claims by or on behalf of any participant in any of the Company Benefit Plans, or otherwise involving any Company Benefit Plan or the assets of any Company Benefit Plan for which the Company or any Company Benefit Plan would reasonably be expected to incur any material liability. No Company Benefit Plan is presently under or subject to an audit or examination (nor has notice been received by Seller or the Company of a potential audit or examination) by any Governmental Entity, whether domestic or foreign, that would reasonably be expected to result in a material liability.

(g) The Company does not maintain, sponsor, contribute to and is not obligated to contribute to, and has not, within the preceding six years, maintained, sponsored, contributed to or been obligated to contribute to a Multiemployer Plan or a “multiple employer plan” within the meaning of Section 4063 or 4064 of ERISA.

(h) Except as set forth on Schedule 3.13(h), neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby will (alone or in combination with any other event) result in an increase in the amount of compensation or benefits, the acceleration of the vesting or timing of payment of any compensation or benefits payable, or any loan forgiveness to or in respect of any current or former employee, officer, director or independent contractor of the Company, or any increased or accelerated funding obligation with respect to any Company Benefit Plan.

### 3.14 Labor.

(a) The Company is not a party to any labor or collective bargaining agreement. Except as set forth on Schedule 3.14, there are no (i) material strikes, work stoppages, work slowdowns or lockouts pending or, to the Seller’s Knowledge, threatened against or involving the Company, (ii) material unfair labor practice charges, grievances or complaints pending or, to the Seller’s Knowledge, threatened by or on behalf of any employee or group of employees of the Company, or (iii) union organization campaigns in progress with respect to any of the Company’s employees. Except as would not reasonably

be expected to have a Material Adverse Effect, the Company is in compliance with all applicable Laws governing the employment of labor. To the Seller's Knowledge, no member of the Company's executive management team has indicated orally or in writing that he or she intends to terminate his or her employment with the Company. To the Seller's Knowledge, within the past three (3) years, no substantiated or upheld allegations of sexual harassment have been made through Seller's formal complaint process against any member of the Company's executive management team.

(b) Schedule 3.14(b) sets forth a complete and accurate list of all of the employees of the Company (and any employee of Seller or a Seller Affiliate if he or she will be transferred to the Company prior to the Closing) as of the date hereof, including in each case, their name, employer, job title, department, hire date, full time/part time status, salaried/hourly status, exempt/nonexempt status, active or leave status (if on leave, with type of leave indicated and projected return date), work location, base salary/wage, last bonus paid, current year's bonus entitlement or target, and outstanding Seller equity awards.

3.15 Litigation. Except as set forth on Schedule 3.15, there are no Legal Proceedings pending or, to the Seller's Knowledge overtly threatened in writing against the Company which, if determined adversely to the Company, would reasonably be expected to have a Material Adverse Effect. The Company is not subject to any Order the violation of which would reasonably be expected to have a Material Adverse Effect.

3.16 Compliance with Laws; Permits. Except as set forth on Schedule 3.16:

(a) To the Seller's Knowledge, (i) the Company is and has at all times since January 1, 2019 been in compliance with all applicable Laws (other than Laws that are exclusively covered by other Sections of this Article III as specified in such Sections) and (ii) since January 1, 2019, the Company has not received any written notice of any violation of any applicable Law (other than Laws that are exclusively covered by other Sections of this Article III as specified in such Sections), except, in each case for such non-compliance or violations which would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Company nor its officers, directors, employees, agents, distributors, and other individuals or entities acting for or on behalf of the Company (collectively, the ("**Relevant Persons**") have directly or indirectly since June 1, 2018 violated or taken any act in furtherance of violating any provision of the U.S. Foreign Corrupt Practices Act of 1977 (as amended), the U.K. Bribery Act 2010, or any other anti-corruption or anti-bribery laws or regulations applicable to the Company.

(c) The Relevant Persons have not directly or indirectly taken any act in material violation of applicable Law in furtherance of any payment, gift, bribe, rebate, loan, payoff, kickback, or any other transfer of value, or offer, promise, or authorization thereof, to any individual or entity, including any Government Official, for the purpose of: (i) improperly influencing or inducing such individual or entity to do or omit to do any act or to make any decision in an official capacity or in violation of a lawful duty; (ii) inducing such individual or entity to influence improperly his or her or its employer, public or private, or any Governmental Entity, to affect an act or decision of such employer or Governmental Entity, including to assist any individual or entity in obtaining or retaining business; or (iii) securing any improper advantage (e.g., to obtain a tax rate lower than allowed by applicable Law).

(d) The Relevant Persons have not in the course of their actions for, or on behalf of, the Company engaged directly or indirectly in material transactions: (i) connected with any of North Korea, Cuba, Iran, Syria, Myanmar, or Sudan; (ii) connected with any government, country, or



other individual or entity that is the target of U.S. economic sanctions administered by the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) or by Her Majesty’s Treasury in the United Kingdom, or the target of any applicable United Nations, European Union or other international sanctions regime, including any transactions with specially designated nationals or blocked persons designated by OFAC or with persons on any United Nations, European Union or United Kingdom assets freeze list; or (iii) prohibited by any law administered by OFAC, or by any other economic or trade sanctions law of the United States or any other jurisdiction.

(e) The Company currently has all material Permits (other than Environmental Permits which are governed exclusively by Section 3.17) which are required for the operation of its businesses as presently conducted. The Company is not in material default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any material Permit to which it is a party.

3.17 Environmental Matters. Except as set forth on Schedule 3.17, or as would not reasonably be expected to result in a Material Adverse Effect:

(a) the operations of the Company are in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with any Permits required under all applicable Environmental Laws necessary to operate its business (“**Environmental Permits**”), and the Company is not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any Environmental Permit to which it is a party;

(b) the Company is not subject to any pending, or to the Seller’s Knowledge, threatened claim alleging that the Company may be in violation of any Environmental Law or any Environmental Permit or may have any Liability under any Environmental Law;

(c) to the Seller’s Knowledge, there has been no release of any Hazardous Substance in amounts or concentrations in violation of applicable Environmental Laws attributable to the operations of the Company;

(d) no consent, waiver, approval, or authorization from any Governmental Entity with respect to any Environmental Laws, including with respect to the Connecticut Transfer Act, is required to be made, obtained, or given in connection with the transaction; and

(e) there are no pending or, to the Seller’s Knowledge, threatened investigations of the Company under Environmental Laws, which would reasonably be expected to result in the Company incurring any Liability pursuant to any Environmental Law.

(f) This Section 3.17 constitutes the sole and exclusive representations and warranties of Seller regarding environmental matters, including without limitation, all matters arising under Environmental Laws.

3.18 Insurance. Excluding insurance policies that have expired and been replaced in the ordinary course of business or as noted on Schedule 3.18, no insurance policy has been cancelled within the last two (2) years and, to the Seller’s Knowledge, no threat has been made to cancel any insurance policy of the Company during such period.

### 3.19 Related Party Transactions; Shared Contracts.

(a) Schedule 3.19(a) lists, as of the date hereof, all material agreements, commitments or arrangements to or by which the Company, on the one hand, and Seller or any of its Affiliates, on the other hand, are or have been a party or otherwise bound or affected and that are currently pending or in effect.

(b) Schedule 3.19(b) lists, as of the date hereof, all agreements, commitments or arrangements between or among Seller or any of its Affiliates (other than the Company) and any third parties under which the Company receives benefits that are material to the operation of its business.

3.20 Financial Advisors. Except as set forth on Schedule 3.20, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller, the Company or their Affiliates in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment from Seller, the Company or their Affiliates in respect thereof.

3.21 Product and Service Warranties and Liabilities. Each service provided or product manufactured, sold or delivered by the Company in the prior three (3) years has been in material conformity with all service or product specifications and all applicable Laws, other than claims for breach of warranty received in the ordinary course of business that are not material the business of the Company. In the prior three (3) years, the Company has not received written notice of any material Liability to any Person in connection with the provision of products or services in relation to the Company, including any material liability for damage caused to the property of any customer or other Person, not reserved against in the Financial Statements. In the prior three (3) years the Company has not received written notice of any material Liability arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product designed, manufactured, assembled, repaired, maintained, delivered, sold or installed, or services rendered, by or on behalf of the Company.

3.22 Inventory; Supplies. The supplies and inventory of the Company are in good and marketable condition in all material respects and are usable and of a quantity and quality saleable in the ordinary course of business except to the extent of the reserves reflected in the Financial Statements. The inventory of the Company set forth in the Financial Statements was valued at cost and was properly stated therein in all material respects. The inventory of the Company constitutes sufficient quantities for the normal operation of its business in the ordinary course of business.

3.23 Title; Sufficiency of Assets. Except as set forth on Schedule 3.23, immediately following the Closing (assuming receipt of all relevant consents, waivers, approvals, Orders, Permits or authorizations set forth on Schedule 3.3(b)), the assets of the Company, along with any transition services or leases provided to Buyer, shall be sufficient, and constitute all of the assets, rights and properties that are necessary for the Company, to conduct the business of the Company following the Closing in all material respects as it is conducted on the date of this Agreement; provided that nothing in this Section 3.23 shall be deemed to constitute a representation or warranty as to the adequacy of amounts of cash or working capital (or the availability of the same).

3.24 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article III (as modified by the Disclosure Schedule hereto as supplemented or amended), neither Seller nor any other Person makes or has made any other express or implied representation or warranty with respect to Seller, the Company or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by Seller, the Company, or any of their respective Affiliates, officers, directors, employees, agents or representatives (collectively, “**Representatives**”). Except for the representations and warranties contained in Article III



hereof (as modified by the Disclosure Schedule hereto as supplemented or amended), Seller directly and on behalf of all Representatives hereby disclaims all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (whether orally or in writing, in any data room relating to the transactions contemplated by this Agreement, in management presentations, functional “break-out” discussions, “fireside chats”, responses to questions or requests submitted by or on behalf of Buyer or in any other form in consideration or investigation of the transactions contemplated by this Agreement) to Buyer or any of its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer or any of its Affiliates by Seller, the Company, or their Representatives). Seller makes no representations or warranties to Buyer regarding (i) merchantability or fitness for any particular purpose; or (ii) the probable success or profitability of the Company. The disclosure of any matter or item in any schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed.

#### **IV. REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer hereby represents and warrants to Seller as follows:

4.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Michigan and has all requisite power and authority to carry on its business as now conducted. Buyer is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties, requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not materially impair its ability to consummate the transactions contemplated by this Agreement.

4.2 Authorization of Agreement. Buyer has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by Buyer have been duly authorized and approved by all requisite corporate or other action of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto) this Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

4.3 Conflicts; Consents of Third Parties.

(a) Except as required by the HSR Act, neither the consummation of the transactions contemplated hereby nor compliance by Buyer with any of the provisions hereof will, in any material respect, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under, any provision of (i) the organizational documents of Buyer; (ii) any material Contract or material Permit to which Buyer is a party or by which any of the material properties or assets of Buyer are bound; (iii) any material Order of any Governmental Entity applicable to Buyer, or by which any of the material properties or assets of Buyer are bound; or (iv) any applicable Law, except in the case of clauses (ii)-(iv) where such conflict, violation, default or right of termination or cancellation would not materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

(b) Except as required by the HSR Act, no material consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Entity is required on the part of Buyer in connection with the execution and delivery of this Agreement or the compliance by Buyer with any of the provisions hereof, or the consummation of the transactions contemplated hereby, except where the failure to obtain such consent, waiver, approval, Order, Permit, authorization or notice would not materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

4.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Buyer, overtly threatened in writing against Buyer, which, if determined adversely to Buyer, would materially impair its ability to consummate the transactions contemplated by this Agreement. Buyer is not subject to any Order the violation of which would materially impair its ability to consummate the transactions contemplated by this Agreement.

4.5 Financial Capability. Buyer (a) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any fees or expenses incurred by Buyer in connection with the transactions contemplated by this Agreement, (b) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder, and (c) has not incurred any obligation, commitment, restriction or liability of any kind, which would impair or adversely affect such resources and capabilities.

4.6 Buyer's Reliance. Buyer acknowledges that it and its representatives have been permitted full and complete access to the books and records, facilities, equipment, Tax Returns, Contracts, insurance policies (or summaries thereof) and other properties and assets of the Company that it and its representatives have desired or requested to see or review, and that it and its representatives have had a full opportunity to meet with the officers and employees of the Company to discuss the business of the Company. Buyer acknowledges that none of Seller, the Company nor any other Person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information regarding the Company furnished or made available to Buyer and its representatives, except as expressly set forth in this Agreement or in any certificate delivered in connection herewith, and none of Seller, the Company nor any other Person (including any officer, director, member or shareholder of any of Seller, the Company, or any of their respective Affiliates) shall have or be subject to any Liability to Buyer or any other Person resulting from the sale to Buyer, or Buyer's use of, any such information, including the information, documents or material made available to Buyer in any "data rooms," management presentations, due diligence or in any other form in expectation of the transactions contemplated by this Agreement. Buyer acknowledges that, should the Closing occur, Buyer shall acquire the Company without any representation or warranty as to merchantability or fitness for any particular purpose, in an "as is" condition and on a "where is" basis, except as otherwise expressly represented or warranted in this Agreement; *provided, however*, that nothing in this Section 4.6 is intended to limit or modify the representations and warranties contained in Article III. Buyer acknowledges that none of Seller, the Company, nor any other Person, directly or indirectly, has made, and Buyer has not relied on, any representation or warranty regarding the pro-forma financial information, financial projections or other forward-looking statements of the Company, and Buyer will make no claim with respect thereto.

4.7 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment from Buyer in respect thereof.

4.8 Solvency. Buyer is not entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the transactions

contemplated by this Agreement and the making of the payments contemplated by Article II, and assuming satisfaction of the conditions to Buyer's obligation to consummate the purchase of Shares as set forth herein, the accuracy of the representations and warranties of Seller set forth herein and the performance by Seller of its obligations hereunder in all material respects, Buyer and its Subsidiaries (including the Company) will be Solvent. For purposes of this Agreement, "**Solvent**" when used with respect to Buyer and its Subsidiaries (including the Company), means that, as of any date of determination (i) the amount of the Present Fair Saleable Value of their assets will, as of such date, exceed all of their Liabilities, contingent or otherwise, as of such date, (ii) Buyer and its Subsidiaries (including the Company) will not have, as of such date, an unreasonably small amount of capital for the business in which they are engaged or will be engaged and (iii) Buyer and its Subsidiaries (including the Company) will be able to pay their debts as they become absolute and mature, taking into account the timing of and amounts of cash to be received by them and the timing of and amounts of cash to be payable on or in respect of their Indebtedness, in each case after giving effect to the transactions contemplated by this Agreement. For purposes of the definition of "Solvent," (i) "debt" means Liability on a "claim" and (ii) "claim" means (A) any right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) the right to an equitable remedy for breach on performance if such breach gives rise to a right to payment, whether or not such equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

4.9 Investment Intent. Buyer is acquiring the Company for its own account with the present intention of holding the Company for purposes of investment, and Buyer is not acquiring the Company with a view to or for the public distribution of securities of the Company, in whole or in part, or as an underwriter or conduit to subsequent purchasers in violation of federal or state securities laws. Buyer does not have any reason to anticipate any change in circumstances, or other particular occasion or event, which would cause Buyer to attempt to sell, transfer or otherwise dispose of such securities in violation of federal or state securities laws.

## V. COVENANTS OF THE PARTIES.

5.1 Conduct of Business Prior to the Closing. Except as otherwise contemplated by this Agreement or as set forth on Schedule 5.1 of the Disclosure Schedule, between the date of this Agreement and the Closing Date, unless Buyer shall otherwise provide its prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall cause the business of the Company to be conducted only in the ordinary course of business in all material respects, and Seller shall cause the Company to use its commercially reasonable efforts to preserve intact in all material respects its business organization. Except as otherwise contemplated by this Agreement or as set forth on Schedule 5.1 of the Disclosure Schedule, between the date of this Agreement and the Closing Date, without the prior consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall cause the Company not to:

- (a) amend its certificate of incorporation or bylaws or equivalent organizational documents;
- (b) issue or sell any shares of capital stock, or any options, warrants, convertible securities or other rights of any kind to acquire any such shares or equity interests;
- (c) declare, set aside, make or pay any dividends or other distributions (whether in cash, stock, property or otherwise) with respect to any of its capital stock;

(d) reclassify, combine, split, subdivide or redeem, or purchase or otherwise acquire, directly or indirectly, any of its capital stock or make any other change with respect to its capital structure;

(e) acquire any corporation, partnership, limited liability company, other business organization or division thereof or any assets other than in the ordinary course of business;

(f) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation or recapitalization of the Company;

(g) enter into any Contract that would be a Material Contract if entered into prior to the date hereof, other than any such Contracts entered into in the ordinary course of business (including Contracts with customers, vendors or clients);

(h) authorize, or make any commitment with respect to, any capital expenditures other than in the ordinary course of business or pursuant to the current capital expenditures budget of the Company;

(i) sell, assign, lease, sublease, mortgage, pledge or otherwise encumber or dispose of any of the material properties or assets of the Company, except for sales of inventory and obsolete assets in the ordinary course of business consistent with past practices;

(j) fail to exercise any rights of renewal that by its terms would otherwise expire, or fail to enforce all rights, as well as perform all obligations with respect to, the Real Property Lease or modify, amend, or terminate the Real Property Lease;

(k) grant or announce any increase in the salaries, bonuses or other compensation payable by the Company to any of its employees, other than (i) as required by Law, (ii) pursuant to any Company Benefit Plans or other employee benefit plans, programs or agreements existing on the date hereof or (iii) other ordinary course increases not inconsistent with the past practices of the Company;

(l) hire, or promote any current employee into, a position on the executive management team of the Company;

(m) amend any Company Benefit Plan in any material respect or establish any new arrangement that would (if it were in effect on the date hereof) constitute a Company Benefit Plan;

(n) make, change or revoke any material Tax election with respect to the Company; compromise or settle any material Tax Liability, claim or assessment that principally relates to the Company; fail to pay any material Taxes of the Company as they become due and payable or timely contest in good faith by appropriate proceedings any assessment of Taxes principally related to the Company; adopt or change any Tax accounting method of the Company; file any amended Tax Return for the Company; agree to an extension or waiver of the limitation period to any Tax claim or assessment that principally relates to the Company; surrender any right to claim a refund of Taxes with respect to the Company; or enter into any closing agreement with respect to any Tax with respect to the Company; or

(o) make any change in any method of accounting or accounting practice or policy, except as required by applicable Law or IFRS.

## 5.2 Covenants Regarding Information.

(a) From the date hereof until the Closing Date, upon reasonable notice, Seller shall cause the Company to afford Buyer and its representatives reasonable access to the representatives, properties, offices, plants and other facilities, books and records of the Company, and shall furnish Buyer with such financial, operating and other data and information as Buyer may reasonably request; *provided, however*, that any such access or furnishing of information shall be conducted at Buyer's expense, during normal business hours, under the supervision of Seller's or the Company's personnel and in such a manner as not unreasonably to interfere with the normal operations of the Company. Notwithstanding anything to the contrary in this Agreement, prior to the Closing, without the prior written consent of Seller, which may be withheld in its sole discretion, Buyer (i) shall not contact any employees of, suppliers to, or customers of, Seller or the Company and (ii) shall have no right to perform invasive or subsurface investigations of the properties or facilities of the Company. Notwithstanding anything to the contrary in this Agreement, neither Seller nor the Company shall be required to disclose any information to Buyer or its representatives if such disclosure would, in Seller's sole discretion, (i) jeopardize any attorney-client or other legal privilege, (ii) conflict with any confidentiality obligations by which Seller or the Company are bound, or (iii) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date hereof.

(b) Buyer shall, and shall cause the Company to, preserve and keep the records held by them relating to the Company for a period of seven (7) years from the Closing Date (or longer if required by applicable Law) and shall make such records and personnel available to Seller as may be reasonably required by Seller in connection with, among other things, any Tax filings of Seller or its Affiliates, any insurance claims by, Legal Proceedings or Tax audits against or governmental investigations of, Seller or its Affiliates or in order to enable Seller to comply with its obligations under this Agreement. In the event Buyer wishes to destroy such records after that time, Buyer shall first give thirty (30) days prior written notice to Seller and Seller shall have the right at its option and expense, upon prior written notice given to Buyer within such thirty (30) day period, to take possession of the records.

## 5.3 Employee Benefits.

(a) Buyer shall provide, or cause to be provided, to each individual who is an employee of the Company on the Closing Date (an "**Affected Employee**"), for a period of twelve (12) months following the Closing Date, (i) during his or her employment, (x) salary, wages, bonuses, commissions and other cash compensation that are at least as favorable as those provided by the Company to such Affected Employee immediately prior to the Closing Date, and (y) employee benefits that taken as a whole are substantially comparable in the aggregate as those provided by the Company under the Core Employee Benefit Plans to the Affected Employees immediately prior to the Closing Date (which in any event shall be at least as favorable to those employee benefit plans provided to other similarly situated employees of Buyer and its Affiliates) and (ii) to the extent his or her employment is terminated during such twelve (12) month period, either severance benefits offered by the Company to similarly situated employees immediately prior to the Closing Date or severance benefits offered to similarly situated employees of the Buyer and its Affiliates at the time of such Affected Employee's termination of employment, whichever is more favorable to such Affected Employee, in each case, taking into account all service with the Company, Buyer and their respective Affiliates in determining the amount of severance benefits payable. From and after the Closing Date, Buyer shall cause the Company to honor any existing employment, consulting, severance, incentive, change of control, salary continuation and other agreements governing employment, compensation and benefits between the Company and any current or former officer, director, employee or consultant of the Company, including any Company Benefit Plan, in each case, to the extent the Company would have been required to perform such agreement.

(b) Buyer shall, or shall cause the Company to, honor all unused vacation, holiday, sickness and personal days accrued by the employees of the Company under the policies and practices of the Company as of immediately prior to the Closing Date. Buyer shall, or shall cause the Company to, provide each Affected Employee with credit for all service prior to the Closing Date with the Company or its Affiliates, and any other employers as to which the Company recognized the prior service of its Affected Employees, for purposes of eligibility, vesting and accruals (other than accruals under any defined benefit “employee pension benefit plan” as defined in Section 3(2) of ERISA) under each employee benefit plan, policy, program, agreement or arrangement in which such Affected Employee is eligible to participate at and following the Closing Date (a “**Buyer Plan**”), except to the extent that such prior service credit would result in a duplication of benefits with respect to the same period of service. In the event of any change in the welfare benefits provided to any Affected Employee under any Buyer Plan, Buyer shall, or shall cause the Company to, (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Affected Employees and their covered dependents under such Buyer Plan (except to the extent that such conditions, exclusions or waiting periods would apply under the Company’s then existing Buyer Plans absent any change in such welfare coverage Buyer Plan) and (ii) provide each Affected Employee and his or her covered dependents with credit for any co-payments and deductibles paid prior to any such change in coverage in satisfying any applicable deductible or out-of-pocket requirements under such new or changed Buyer Plan.

(c) Nothing contained in this Section 5.3 shall (i) guarantee employment for any period of time or preclude the ability of Buyer or the Company to terminate the employment of any Affected Employee at any time and for any reason (subject to the provision of severance in accordance with Section 5.3(a)), (ii) require Buyer or the Company to continue any specific employee benefit plans, or (iii) amend any Company Benefit Plan or other employee benefit plans or arrangements.

(d) Buyer and its Affiliates shall not, at any time prior to 90 days after the Closing Date, effectuate a “plant closing” or “mass layoff,” as such terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 (“**WARN**”), or effectuate any similar triggering event under any other applicable Law, affecting in whole or in part any site of employment, facility, operating unit or Affected Employee. Buyer agrees to provide any required notice under WARN and any other applicable Law and to otherwise comply with any such statute with respect to any “plant closing” or “mass layoff” or any similar triggering event under any other applicable Law occurring on or after the Closing or arising as a result of the transactions contemplated hereby.

(e) To the extent that, as a result of the Closing, any Affected Employee or former employee of the Company becomes entitled to a payment under any of the agreements set forth on Schedule 5.3(e) (such payment, an “**Incentive Award Payment**”), Seller shall (i) at the Closing, notify Buyer of such Incentive Award Payment and provide Buyer with the information related to such Incentive Award Payment in Seller’s possession so that Buyer may calculate the amount of the Employee Tax Liability, the Employer Tax Liability and the Compensation Deduction arising as a result of such Incentive Award Payment and (ii) promptly remit to Buyer an amount equal to the Incentive Award Payment less the Compensation Deduction. Buyer shall (x) pay, or shall cause the Company to pay, to such Affected Employee or former employee an amount equal to the Incentive Award Payment less the Employee Tax Liability and (y) timely make all required payments of the Employee Tax Liability and Employer Tax Liability to the applicable Taxing Authority. This Section 5.3(e) shall be applied without duplication to any deductions allocated to Seller under the Accounting Methodology.

#### 5.4 Confidentiality.

(a) The confidentiality agreement dated April 6, 2021 between Buyer and Seller (the “**Confidentiality Agreement**”) shall continue in full force and effect until the Closing Date, at which time



such Confidentiality Agreement shall terminate. If for any reason this Agreement is terminated prior to the Closing Date, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

(b) From and after the Closing, Seller agrees that it will not, and will instruct its Representatives and cause Seller's controlled Affiliates not to, use or disclose at any time any confidential, non-public information of the Company in its possession as of the Closing Date ("**Company Confidential Information**"), other than to its Representatives and Affiliates (provided, that Seller shall be responsible for any breach of this Section 5.4(b) by any of such Representatives or Affiliates to which it disclosed such information as if such Representatives and Affiliates were bound by this Section 5.4(b)); provided, however, this Section 5.4(b) shall not apply to any information (x) that is required to be disclosed by applicable Law (including securities Laws) or by a Governmental Entity, national securities exchange or self-regulatory organizations having supervisory jurisdiction over such Person, (y) that is reasonably necessary to be disclosed in connection with any Legal Proceeding with respect to this Agreement (including in response to any summons, subpoena or other legal process or formal or informal investigative demand issued to the disclosing party in the course of any Legal Proceeding) or (z) information that becomes publicly available, other than as a result of any action or inaction by Seller or its Representatives or controlled Affiliates. In the event Seller, any of its Affiliates or any of their respective Representatives is required by Law to disclose any Company Confidential Information, Seller shall promptly notify Buyer in writing, which notification shall include the nature of the Law and the extent of the required disclosure, and Seller, its Affiliates and of their respective Representatives, as applicable, shall cooperate with Buyer and the Company (at Buyer's and the Company's expense) to preserve the confidentiality of such information consistent with applicable Law.

(c) From and after the Closing, Buyer agrees that it will not, and will instruct its Representatives and cause Buyer's controlled Affiliates (including, for the avoidance of doubt, the Company) not to, use or disclose at any time any confidential, non-public information of Seller and its Affiliates (other than the Company) in its possession as of the Closing Date ("**Seller Confidential Information**"), other than to its Representatives and Affiliates (provided, that Buyer shall be responsible for any breach of this Section 5.4(c) by any of such Representatives or Affiliates (including, after the Closing, the Company) to which it disclosed such information as if such Representatives and Affiliates (including, after the Closing, the Company) were bound by this Section 5.4(c)); provided, however, this Section 5.4(b) shall not apply to any information (x) that is required to be disclosed by applicable Law (including securities Laws) or by a Governmental Entity, national securities exchange or self-regulatory organizations having supervisory jurisdiction over such Person, (y) that is reasonably necessary to be disclosed in connection with any Legal Proceeding with respect to this Agreement (including in response to any summons, subpoena or other legal process or formal or informal investigative demand issued to the disclosing party in the course of any Legal Proceeding) or (z) information that becomes publicly available, other than as a result of any action or inaction by Buyer or its Representatives or controlled Affiliates (including, after the Closing, the Company). In the event Buyer, any of its Affiliates (including, after the Closing, the Company) or any of their respective Representatives is required by Law to disclose any Seller Confidential Information, Buyer shall promptly notify Seller in writing, which notification shall include the nature of the Law and the extent of the required disclosure, and Buyer, its Affiliates (including, after the Closing, the Company) and of their respective Representatives, as applicable, shall cooperate with Seller (at Seller's expense) to preserve the confidentiality of such information consistent with applicable Law.

5.5 Public Announcements. Prior to the Closing, Seller and Buyer shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statement with respect to the transactions contemplated hereby, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law or pursuant to the rules or regulations of any securities exchange on which the

securities of such party or direct or indirect parent company are listed or traded, in which case the party proposing to issue such press release or make such public statement shall use commercially reasonable efforts to consult in good faith with the other party before issuing such press release or making such public statement to attempt to agree upon mutually satisfactory text.

#### 5.6 Reasonable Best Efforts.

(a) Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and applicable Law to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as reasonably practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as reasonably practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the transactions contemplated by this Agreement. In furtherance and not in limitation of the foregoing, (A) each party hereto agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable and in any event within five (5) Business Days of the date hereof and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and use its reasonable best efforts to take, or cause to be taken, all other actions consistent with this Section 5.6 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act (including any extensions thereof) as soon as practicable, (B) each of the parties hereto shall each use its reasonable best efforts to (x) take all action necessary to ensure that no state takeover statute or similar Law is or becomes applicable to the transactions contemplated by this Agreement and (y) if any state takeover statute or similar Law becomes applicable to the transactions contemplated by this Agreement, take all action necessary to ensure that such transactions are consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise minimize the effect of such Law on the transactions contemplated by this Agreement and (C) Seller shall use its commercially reasonable efforts to obtain consent to assignment of the Real Property Lease, in form and substance reasonably acceptable to Buyer. Seller and Buyer will each request early termination of the waiting period with respect to the transactions contemplated by this Agreement under the HSR Act if and to the extent such early termination request is permitted by the United States Federal Trade Commission and the Antitrust Division of the Department of Justice. The HSR Act filing fees shall be borne exclusively by Buyer.

(b) Subject to applicable Law relating to the exchange of information, Seller and Buyer shall have the right to review in advance and, to the extent practicable, each will consult with the other on and consider in good faith the views of the other in connection with, all of the information relating to Buyer or Seller, as the case may be, and any of their respective Subsidiaries, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the transactions contemplated by this Agreement; *provided, however*, that with respect to any documents or materials required to be filed under the HSR Act or any antitrust or competition Laws of any other applicable jurisdiction that contain information that is confidential or proprietary to the providing party, such party shall not be required to provide such information to the other party and may provide such information directly to the third party and/or Governmental Entity. In exercising the foregoing rights, each of Seller and Buyer shall act reasonably and as promptly as practicable.

(c) Without limiting Section 5.6(a), Buyer shall take, and shall cause its Affiliates to take, any and all actions necessary in order to ensure that (A) no requirement for any non-action, consent or approval of the Federal Trade Commission, the Antitrust Division of the United States Department of



Justice or any other applicable Governmental Entity, (B) no decree, Order or judgment and (C) no other matter relating to any U.S. or non-U.S. competition, antitrust, merger control or investment Law, would preclude, impair or delay the consummation of the transactions contemplated by this Agreement, including by consent decree or otherwise (1) selling, licensing, divesting or disposing of or holding separate any entities, assets, Intellectual Property rights or businesses (including, after the Closing, the Company), (2) terminating, amending or assigning existing relationships or contractual rights and obligations, (3) changing or modifying any course of conduct regarding future operations, (4) otherwise taking actions that would limit its freedom of action with respect to, or its ability to retain, one or more of their respective businesses, product lines or assets or rights or interests therein and (5) committing to take any such actions in the foregoing clauses (1), (2), (3) or (4); provided that Buyer is not obligated to take any action contemplated in clause (1) through (4) unless such action is conditioned upon the closing of the transactions contemplated hereby.

5.7 Tax Matters.

(a) Tax Administration.

(i) Seller shall prepare and timely file, or cause to be prepared and timely filed, when due all Tax Returns for Tax periods of the Company ending on or prior to the Closing Date and shall pay all Taxes of the Company with respect to such Tax Returns. All such Tax Returns shall be prepared in a manner consistent with past practice except as otherwise set forth in this Agreement or as required by applicable Law. Seller shall provide Buyer with copies of completed drafts of such Tax Returns no later than thirty (30) days prior to the due date for filing thereof (including applicable extensions) for Buyer's review and comment and shall reflect in the Tax Returns filed any good faith reasonable comments received by Seller no later than five (5) days prior to the due date for filing thereof (including any applicable extension).

(ii) Buyer shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns other than those for which Seller is responsible pursuant to Section 5.7(a)(i). With respect to all Straddle Periods, such Tax Returns shall be prepared and filed in a manner consistent with past practice and no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made or methods used in prior periods in filing such Tax Returns unless otherwise set forth in this Agreement or required by applicable Law. Buyer shall provide Seller with copies of all material Tax Returns for any Straddle Period a reasonable time prior to the due date for filing thereof (including applicable extensions) for Seller's review and comment and shall reflect in the Tax Returns filed any good faith reasonable comments received by Buyer a reasonable time prior to the due date for filing thereof (including any applicable extension).

(b) Cooperation. After the Closing Date, Seller, Buyer and their respective Affiliates shall cooperate, as reasonably requested, in connection with the preparation and filing of all Tax Returns prepared and filed pursuant to Section 5.7(a).

(c) Covenants. None of Buyer (or of its Affiliates) shall (or shall cause or permit any other Person), except as otherwise required by Law, to (i) amend, re-file or otherwise modify any Tax Return relating in whole or in part to the Company with respect to any Pre-Closing Tax Period (or portion thereof), (ii) make any Tax election that has retroactive effect to any Pre-Closing Tax Period (or portion thereof), (iii) initiate discussions or examinations with Taxing Authorities regarding Taxes with respect to a Pre-Closing Tax Period (or portion thereof), (iv) extend or waive any statute of limitations for Taxes with respect to a Pre-Closing Tax Period (or portion thereof) or (v) take any action that would reasonably be expected to have an adverse effect with respect to a Pre-Closing Tax Period (or portion thereof), in each case, without the prior written consent of Seller, not to be unreasonably withheld, conditioned or delayed.

For the avoidance of doubt, Seller may reasonably withhold consent if such requested action may increase the Tax liabilities of Seller by \$20,000 or more.

(d) Straddle Period Tax Allocation. In any case in which a Tax is assessed with respect to a Straddle Period, Taxes attributable to a Straddle Period shall be allocated (i) to the Pre-Closing Tax Period for the period up to and including the Closing Date and (ii) to the post-Closing period for the period subsequent to the Closing Date. Any allocation of income or deduction required to determine any Taxes attributable to a Straddle Period shall be made by means of a closing of the books and records of the Company as of the close of business on the Closing Date, provided that items that are calculated on a periodic basis shall be allocated between the period ending on the Closing Date and the period after the Closing Date in proportion to the number of days in each such period.

(e) Transfer Taxes. Notwithstanding any other provision of this Agreement, all transfer, documentary, stamp, excise, recording, real property, notarial, sales, use, registration and other similar Taxes or fees (which, for the avoidance of doubt, shall exclude any Taxes based on or attributable to income or gain arising by reason of the transactions contemplated by this Agreement) imposed by any Governmental Entity in connection with the transactions contemplated by this Agreement (collectively, “**Transfer Taxes**”) shall be borne by Buyer. Buyer shall timely file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes (except to the extent such Tax Returns are required by Law to be filed by Seller) and provide to Seller upon request evidence of payment of all Transfer Taxes. Buyer hereby agrees to indemnify Seller against and hold Seller harmless from any and all Transfer Taxes.

(f) Disputes. Seller and Buyer shall attempt in good faith to resolve any disagreements regarding any Tax Returns covered hereby prior to the due date for filing. In the event that Seller and Buyer are unable to resolve any dispute with respect to such Tax Returns at least ten (10) days prior to the due date for filing, they shall promptly refer their differences to the Independent Accountant to be resolved in accordance with the provisions of Section 2.3(b).

(g) Refunds. The Seller will be entitled to any Tax refunds or overpayments that are received by the Company that are attributable to any taxable period or portion thereof ending on or prior to the Closing Date, except to the extent any such refund or overpayment (a) was taken into account in the calculation of Closing Net Working Capital or (b) arises as the result of a carryback of a loss or other Tax benefit or attribute from a Post-Closing Tax Period. At the request of the Seller, Buyer shall make commercially reasonable efforts to cause the Company to make all filings and take all actions necessary to secure such refunds or overpayments as promptly as practicable and to pay to the Seller any such refund or the amount of any such overpayment within ten (10) days after the actual receipt of or entitlement to such refund or overpayment, net of (x) any Taxes of Buyer and its Affiliates (including the Company) attributable to the receipt of any such refund, and (y) any reasonable costs and expenses incurred by Buyer and its Affiliates (including the Company) in obtaining any such refund.

(h) Section 338(g) Election. None of the Buyer or any Affiliate of the Buyer shall (or shall cause or permit the Company to) make any election under Section 338(g) of the Code (and any corresponding election under state or local tax law) with respect to the purchase and sale of the Shares hereunder.

(i) Section 338(h)(10) Election. If Buyer would like to make an election with respect to the sale of the Shares under Section 338(h)(10) of the Code and under any similar provision of state or local Tax law (collectively, the “**338(h)(10) Election**”), Buyer shall, no later than five (5) Business Days after the date of this Agreement, notify Seller of such desire and request that Seller join any filings that may be necessary in order to effectuate the 338(h)(10) Election. Upon receipt of any such request, Seller shall

deliver to Buyer as promptly as practicable a computation of the Tax Gross-Up Amount together with a reasonably detailed calculation thereof. If Buyer elects to proceed with the 338(h)(10) Election after receiving Seller's statement of the Tax Gross-Up Amount, Buyer shall pay to Seller (or an Affiliate of Seller as requested by Seller) at Closing by wire transfer of immediately available funds an amount equal to the Tax Gross-Up Amount. As promptly as practicable following the receipt of such payment, Seller shall deliver to Buyer a duly executed IRS Form 8023 which Buyer may complete and submit to the United States Internal Revenue Service and with any other applicable filings required under any similar provision of state or local Tax law. Seller shall cooperate and shall cause its Affiliates to cooperate in providing Buyer with any applicable information reasonably requested by Buyer in order to make the 338(h)(10) Election, including asset and stock basis information. In no event shall Buyer be required to pay any gross-up amount on the Tax Gross-Up Amount.

5.8 Use of Name. Buyer agrees that, except as provided in this Section 5.8, neither it nor its Affiliates (including the Company after the Closing) shall have any right to use of the name "Schneider", "Schneider Electric", "Lexium" or any service marks, trademarks, trade names, identifying symbols, logos, emblems, signs or insignia related thereto or containing or comprising the foregoing, including any name or mark confusingly similar thereto (collectively, the "**Excluded Marks**"), and will not at any time hold themselves out as having any affiliation with Seller or any of its Affiliates. As promptly as practicable following the Closing, but in no event later than six months after the Closing Date, Buyer shall stop, and shall cause its Affiliates (including the Company) to stop, using the Excluded Marks in any form including by removing, permanently obliterating or covering all Excluded Marks, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials; *provided*, that the foregoing does not apply to uses of the Excluded Marks on (a) inventory of the Company existing as of the Closing; and (b) machinery, tooling and other durable items used by the Company and not regularly subject to public view. During such time, Buyer and its Affiliates (including the Company) shall have a non-exclusive, royalty free license to use the Excluded Marks subject to the provisions of this Section 5.8. Without limiting the foregoing, in no event shall Buyer or its Affiliates (including the Company) use or display any Excluded Mark in any way (i) other than in the same manner used by the Company immediately prior to the Closing Date, (ii) in connection with products or services not conforming to the same standard of quality that existed prior to the Closing Date, or (iii) that could detract from or impair the goodwill associated with such Excluded Marks. Notwithstanding any of the foregoing, Buyer shall not be in violation of the immediately preceding sentence by reason of its or the Company's use or distribution after the Closing of any inventory of the Company that existed as of the Closing Date, and Buyer shall not be in violation of this Section 5.8 by reason of (i) the appearance of the Excluded Marks in or on any third party's publications, marketing materials, brochures, instruction sheets, equipment or products that were distributed in the ordinary course of business or pursuant to a Contract prior to the Closing Date, and that generally are in the public domain, or any other similar uses by any such third party over which Buyer or the Company has no control, (ii) the appearance of the Excluded Marks in or on books, records or other materials that, as of the Closing Date, contain or display the Excluded Marks, if such copies are used solely for internal or archival purposes, (iii) use of the Excluded Marks to comply with applicable Laws or for litigation, regulatory or corporate filings, or (iv) the use by Buyer and the Company of the Excluded Marks in a non-trademark manner for purposes of conveying to customers it has acquired the Company from Seller. Buyer shall, within ten (10) Business Days after the Closing, file, or cause to be filed, with the Secretary of State of Connecticut all documentation necessary to change the name of the Company to a name that does not include "Schneider" or any confusingly similar name.

5.9 Insurance.

(a) Buyer acknowledges and agrees that, from and after the Closing Date, the Company shall cease to be insured by any insurance policies or any self-insured programs of Seller or its Affiliates. With respect to events or circumstances relating to the Company that occurred or existed prior

to the Closing Date and that remain covered by U.S.-based occurrence-based third-party liability insurance policies of Seller or its Affiliates, Buyer may request Seller to make claims under such policies (excluding, for the avoidance of doubt, any non-U.S.-based policies), subject to the terms and conditions of such policies; *provided* that Buyer (i) shall promptly give Seller notice in writing of any events or circumstances in respect of which Buyer has requested Seller to make a claim pursuant to this Section 5.9, (ii) shall be liable for all uninsured or uncovered amounts for such claims (including any applicable deductibles that are not covered by any insurance policies of Seller or its Affiliates), (iii) shall reimburse Seller and its Affiliates for any increased costs incurred by Seller or its Affiliates as a result of such claims, including any retroactive or prospective premium adjustments associated with such coverage, and (iv) shall not have such right to the extent that such claims are covered by insurance policies of Buyer or its Affiliates. As of the second anniversary of this Agreement, Buyer's right pursuant to the immediately preceding sentence shall automatically expire. For the avoidance of doubt, Seller and its Affiliates shall retain all rights to control its insurance policies and self-insured programs, including the right to exhaust, settle, release, commute, buy back or otherwise resolve disputes with respect to any of such policies and programs, notwithstanding whether any such policies or programs apply to any liabilities of Buyer.

(b) For a period of two years after the Closing Date, Buyer shall, or shall cause its Affiliates to, maintain liability insurance policies (collectively, the “**Buyer Policies**”) in respect of claims relating to the Company made after the Closing Date and arising from any events or circumstances that occurred or existed prior to the Closing Date, to the extent that such events or circumstances were covered by “claims made” third-party liability insurance policies of Seller or its Affiliates that were in effect on the Closing Date and under which coverage terminated as of the Closing Date pursuant to Section 5.9(a) (collectively, the “**Seller Claims Made Policies**”). The Buyer Policies shall (i) be in effect as of the Closing Date and (ii) provide for coverage limits that are the same or greater than the coverage limits under the applicable Seller Claims Made Policies.

#### 5.10 Intercompany Accounts; Intercompany Arrangements.

(a) Other than any intercompany balances relating to the agreements, commitments and arrangements set forth in Schedule 5.10(a), Seller shall cause all intercompany accounts between Seller and any of its Affiliates, on the one hand, and the Company, on the other hand, to be settled or otherwise eliminated prior to the Closing Date in such a manner as Seller shall determine, in each case, without any further liability to Seller or any of its Affiliates, on the one hand, or to Buyer, its Affiliates or the Company, on the other hand, except for trade accounts receivable and trade accounts payable included in the calculation of the Closing Net Working Capital, which accounts shall remain outstanding in accordance with their terms.

(b) Effective as of immediately prior to the Closing, other than (x) pursuant to this Agreement and (y) as otherwise set forth in Schedule 5.10(a) (which Schedule may be amended from time to time prior to the Closing to reflect any mutually agreed additions or deletions), (i) all agreements, commitments and other arrangements set forth in Schedule 3.19(a) and any agreements, commitments or arrangements entered into after the date hereof and before the Closing between the Company, on the one hand, and Seller or any of its Affiliates, on the other hand, shall be terminated, without any party having any continuing obligations thereunder, and (ii) the parties thereto shall no longer receive any benefits under any such contracts, agreements, arrangements, commitments, instruments or other obligations.

5.11 Termination of Guarantees. From and after the date of this Agreement, Buyer shall use its commercially reasonable efforts to obtain, on or prior to the Closing, the termination of, and full release of Seller and its Affiliates (other than the Company) from, all obligations of Seller and its Affiliates (other than the Company) arising under all guarantees, clawback arrangements, keepwells,

letters of credit, indemnity or contribution agreements, support agreements, comfort letters, performance or bid bonds, insurance surety bonds or other contingent obligations (collectively, the “**Seller Guarantees**”) set forth on Schedule 5.11. Such efforts shall include an offer by Buyer (or, with Seller’s consent, by a Subsidiary or other Affiliate of Buyer or by other Persons) to substitute its own obligations for those of Seller and its Affiliates (other than the Company) under each Seller Guarantee on terms that are not less favorable than the terms that apply to Seller or its Affiliates (other than the Company). To the extent a Seller Guarantee cannot be replaced on or prior to the Closing Date, Buyer shall use its commercially reasonable efforts to do so as promptly as practicable following the Closing and shall indemnify and hold Seller and its Affiliates harmless from and against any and all Losses resulting from any payment made by Seller or any of its Affiliates to a third party, or any draw-down made by the holder of such Seller Guarantee, in each case, in respect of any Seller Guarantee set forth on Schedule 5.11.

5.12 Payments Received. Seller and Buyer agree that, after the Closing Date, they shall hold and shall promptly transfer and deliver to the other party, from time to time as and when received by it and in the currency received, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive after the Closing Date which belongs to the other party, including any payments of accounts receivable and insurance proceeds, and shall account to the other party for all such receipts. In the event of a dispute between the parties regarding any party's obligations under this Section 5.12, the parties shall cooperate and act in good faith to promptly resolve such dispute and, in connection with such cooperation, allow each other reasonable access to the records of the other relating to such disputed item.

5.13 Further Actions. Upon the terms and subject to the conditions in this Agreement, each party shall use its reasonable best efforts to take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable in order for such party to fulfill and perform its respective obligations in respect of this Agreement, including to cause the conditions to their respective obligations set forth in Article VI to be satisfied (and not waived) and otherwise to consummate and make effective the transactions contemplated hereby and thereby. From time to time after the Closing Date, at the request of another party, without further consideration and at the expense of the party so requesting, each of the parties shall execute and deliver to such requesting party, or shall cause to be executed and delivered to such requesting party, such additional instruments or documents, and shall take or cause to be taken such other action, as such requesting party may reasonably request in order to consummate more effectively the transactions contemplated hereby. In addition, Seller shall deliver promptly to Buyer all records, manuals, books, blank forms, documents, letters, memoranda, notes, notebooks, reports, data, tables, calculations or copies thereof, which are the property of the Company or which relate in any way to the business, products, practices or techniques of the Company, including as set forth on Schedule 5.13.

5.14 Intellectual Property. If within six months after the Closing Buyer reasonably determines that certain, material Intellectual Property owned by or Sublicensable by Seller or any of its Subsidiaries (excluding, for the avoidance of doubt, (i) any Excluded Marks, (ii) any third-party software licenses that are not Sublicensable or that will be provided as transition services under the Transition Services Agreement and for which Buyer will be responsible upon conclusion of such transition services and (iii) any other Contracts or Intellectual Property listed on Schedule 3.19(a) or Schedule 3.19(b)) is used by the Company as of the Closing in the design or manufacture of any of the Company’s products and delivers written notice to Seller that such Intellectual Property is necessary in all material respects for the Company’s continued design or manufacture of its products as conducted immediately prior to Closing, Seller and Buyer agree to cooperate in good faith to find an arrangement reasonably acceptable to Seller and Buyer that provides Seller with the benefits of such Intellectual Property



thereafter. For purposes of this Section 5.14, “**Sublicensable**” means that Seller or one of its Subsidiaries has the right to grant licenses or sublicenses to Buyer within the scope granted herein without requiring any third party consent or resulting in the payment of royalties or other consideration by Seller or its Subsidiaries to third parties. Without limiting the representations and warranties set forth in Article III hereof, any benefits provided by Seller and its Subsidiaries pursuant to this Section 5.14 will be furnished “as is”, with all faults and without warranty of any kind, express, implied, statutory or otherwise.

5.15 Business Covenants. Seller agrees, in further consideration of the amounts to be paid hereunder for the Shares and the goodwill of the Company sold by Seller, that, after the Closing Date:

(a) Seller shall not (and shall cause Seller’s controlled Affiliates (collectively with Seller, the “**Restricted Parties**”) not to) directly or indirectly until the third (3<sup>rd</sup>) anniversary of the Closing Date induce or attempt to induce any customer, supplier or licensor of the Company as of the Closing Date who is located in a Restricted Territory to cease or modify doing Business with the Company as conducted on the Closing Date; provided, however, that the restrictions set forth in this Section 5.15(a) shall not (i) restrict the Restricted Parties from engaging in any activities carried on by the Restricted Parties as of the Closing Date to the extent they do not directly overlap with the Business, (ii) restrict the ability of the Restricted Parties to participate in projects in which the Restricted Parties may be required to engage in business (including, but not limited to the purchase of Competitive Products) with a Competing Business provided that, for each project, such business constitutes less than twenty percent (20%) of the total estimated value of such project, and (iii) restrict the Restricted Parties from acquiring or having an ownership interest in any entity engaged in a Competing Business if (x) the Restricted Parties’ ownership constitutes twenty percent (20%) or less of such entity whose securities have been registered under the Securities Act of 1933, as amended, or Section 12 of the Securities Exchange Act of 1934, as amended, (y) sales generated by such entity from Competitive Products represent less than twenty percent (20%) of the aggregate annual sales revenues of such entity or (z) if the net asset value attributable to such entity’s Competing Business during the most recent fiscal year does not exceed \$5 million.

(b) Seller shall not (and shall cause Seller’s controlled Affiliates not to) directly, or through directing a third party to, until the third (3<sup>rd</sup>) anniversary of Closing, (i) induce or attempt to induce any Person who was an employee of the Company on the date of this Agreement or the Closing Date to leave the employ of the Company, or (ii) hire any person who was an employee of the Company on the date of this Agreement or the Closing Date, except, in the case of each of clauses (i) and (ii), (x) as part of (or arising from) a general solicitation, search, or advertisement for employees or consultants through public advertisements not targeted at such employees or (y) those employees whose employment is terminated by the Company after the Closing Date.

(c) Seller and Buyer agree that the covenants and provisions in this Section 5.15 are reasonable in duration and scope. It is the intention of the Seller and Buyer that if any of the restrictions or covenants contained in this Section 5.15 is held to be for a length of time or scope which is not permitted by applicable Law or in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under applicable Law, the courts of the State of Delaware shall construe and interpret or reform Section 5.15(a) or Section 5.15(b), as applicable, to provide for a covenant having the maximum enforceable time period, scope and other provisions, in each case not greater than those contained in Section 5.15(a) or Section 5.15(b), as shall be valid and enforceable under such applicable Law.

5.16 Supplier Agreement. Seller shall cause the Company to use commercially reasonable efforts to enter into a Supplier Agreement prior to or concurrently with the Closing on terms and conditions that are at least as favorable in the aggregate to the Company as the terms of the Company’s arrangement with such supplier as of the date of this Agreement. In the event the Company has not entered into a

Supplier Agreement prior to the Closing, until such time as the Company enters into a Supplier Agreement, but no later than six (6) months after the Closing Date, the Transition Services Agreement will provide the Company with the right to continue to procure supplies from Supplier No. 1 in the same manner as if the Company were still an Affiliate of Seller.

## VI. CONDITIONS TO CLOSING.

6.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of the following conditions:

(a) The notifications of Buyer and Seller pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated, and all approvals required under any other applicable Laws shall have been obtained or any applicable waiting periods thereunder (and any extensions thereof) shall have expired or been terminated.

(b) Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited or made illegal by any applicable Law.

6.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) The representations and warranties contained in Article III of this Agreement shall be true and correct both when made and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to “materiality” (including the word “material”) or “Material Adverse Effect” set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, other than the representations and warranties set forth in Sections 3.2 and 3.4, which shall be true and correct in all respects, or prevent, materially delay or materially impede the performance by Seller of its obligations under this Agreement or the consummation of the transactions contemplated hereby.

(b) Seller shall have in all material respects duly performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller at or prior to the Closing.

(c) From the date hereof through the Closing, there shall not have occurred any event, circumstance, development, change or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Seller shall have delivered to Buyer a certificate, dated as of the Closing Date, signed by a duly authorized officer of Seller certifying as to compliance with the matters described in Section 6.2(a), Section 6.2(b) and Section 6.2(c).

(e) Seller and the Company shall have delivered to Buyer duly executed counterparts of a transition services agreement in form and substance mutually acceptable to Seller and Buyer (the “**Transition Services Agreement**”).

6.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) The representations and warranties contained in Article IV of this Agreement shall be true and correct both when made and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to “materiality” (including the word “material”) or “Material Adverse Effect” set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, other than the representations and warranties set forth in Section 4.2, which shall be true and correct in all respects, or prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or the consummation of the transactions contemplated hereby.

(b) Buyer shall have in all material respects duly performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Buyer at or prior to the Closing.

(c) Seller shall have delivered to Buyer a certificate, dated as of the Closing Date, executed by an officer of Seller, certifying the fulfillment of the conditions specified in Sections 6.3(a) and 6.3(b).

(d) Buyer shall have delivered to Seller a duly executed counterpart of the Transition Services Agreement.

6.4 Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was primarily caused by such party’s failure to comply with any provision of this Agreement.

## VII. TERMINATION.

7.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned:

(a) at any time, by mutual written agreement of Seller and Buyer;

(b) by either Buyer or Seller, by written notice to the other party if:

(i) at any time after October 31, 2021 (the “**Outside Date**”), *provided, however*, that in the event a final determination from the applicable Governmental Entity with respect to any approval required under Section 6.1(a) has not been received by the Outside Date, the Outside Date shall automatically be extended until the receipt of such final determination (but in no event shall the Outside Date be extended past 180 days after the original Outside Date), *provided further*, that the right to terminate this Agreement pursuant to this Section 7.1(b)(i) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Closing to be consummated by such time; or

(ii) a court of competent jurisdiction shall have issued an Order permanently restraining or prohibiting the transactions contemplated by this Agreement, and such Order shall have become final and nonappealable; *provided, however*, that the right to terminate this Agreement



under this Section 7.1(b)(ii) shall not be available to a party if such Order was primarily due to the failure of such party to perform any of its obligations under this Agreement;

(c) by Buyer, upon written notice to Seller, if Seller breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.2(a) or Section 6.2(b), (B) cannot be or has not been cured within fifteen (15) days following delivery of written notice of such breach or failure to perform and (C) has not been waived by Buyer; *provided*, that the right to terminate this Agreement pursuant to this Section 7.1(c) shall not be available to Buyer if the failure of Buyer to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach; or

(d) by Seller, upon written notice to Buyer, if Buyer breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.3(a) or Section 6.3(b) (B) cannot be or has not been cured within fifteen (15) days following delivery of written notice of such breach or failure to perform and (C) has not been waived by Seller; *provided*, that the right to terminate this Agreement pursuant to this Section 7.1(d) shall not be available to Seller if the failure of Seller to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach.

7.2 Procedure and Effect of Termination. In the event of the termination of this Agreement and the abandonment of the transactions contemplated by this Agreement pursuant to Section 7.1 hereof, this Agreement shall become void and there shall be no Liability on the part of any party hereto except (a) the provisions and obligations provided for in Section 1.1, Section 5.4, Section 5.5, this Section 7.2, and Article IX hereof shall survive any such termination of this Agreement.

**VIII.**  
**SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS.**

8.1 Survival of Representations, Warranties and Covenants. None of the representations and warranties contained herein or in any closing certificate delivered pursuant to this Agreement and, except as set forth in this Section 8.1, none of the covenants and agreements contained herein that are to be performed prior to the Effective Time will survive the Closing. The parties hereto acknowledge and agree that, in the event the Closing occurs, no party may bring a cause of action against any other party claiming, based upon or arising out of a breach of any of the representations and warranties set forth herein or the covenants and agreements contained herein that are to be performed prior to the Effective Time; *provided, however*, that nothing shall limit the ability of the parties to bring a cause of action for Fraud. This Section 8.1 shall not limit any covenant or agreement of the parties under Section 5.10 or any provision that by its terms contemplates performance effective as of or after the Closing or the bringing of any cause of action claiming, based upon or arising out of any breach thereof.

**IX.**  
**MISCELLANEOUS.**

9.1 Notices. All notices, requests, demands, waivers and communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered (i) by hand (including by reputable overnight courier), (ii) by mail (certified or registered mail, return receipt requested) or (iii) by electronic transmission (receipt of which is confirmed):

(a) If to Buyer, to:

Novanta Corporation  
125 Middlesex Turnpike  
Bedford, MA 01730  
Attention: Robert Buckley  
Email: robert.buckley@novanta.com

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

Jenner & Block LLP  
353 N. Clark St.  
Chicago, Illinois 60654  
Attention: Thomas Monson, Esq.  
Email: tmonson@jenner.com

(b) If Seller, to:

Schneider Electric Motion USA, Inc.  
c/o Schneider Electric USA, Inc.  
38 Neponset Avenue  
Foxboro, MA 02035  
Attention: Peter Wexler, Senior Vice President and Group General Counsel  
Joy Chen, Senior Legal Counsel, Mergers & Acquisitions  
Email: peter.wexler@se.com  
joy.chen@se.com

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

Hinckley Allen & Snyder LLP  
100 Westminster Street  
Suite 1500  
Providence, Rhode Island 02903  
Attention: Joseph Kuzneski, Esq.  
Email: jkuzneski@hinckleyallen.com

or to such other Person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given (x) on the date on which so hand-delivered, (y) if sent by mail, the third Business Day following the date on which so mailed and (z) if sent by electronic transmission, upon confirmation of receipt.

9.2 Exhibits and Schedules. For purposes of the representations and warranties of Seller contained herein, disclosure in any section of the Disclosure Schedule of any facts or circumstances shall be deemed to be adequate response and disclosure of such facts or circumstances with respect to all representations or warranties by such entities calling for disclosure of such information, if it is reasonably apparent from a disclosure item or the documentation referenced that another disclosure section is also applicable. The inclusion of any matter, information or item in any section of the Disclosure Schedule shall not be deemed to constitute an admission of any Liability by Seller or the Company to any third party or otherwise imply that any such matter, information or item is material or creates a measure for materiality for the purposes of this Agreement.

9.3 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and exhibits hereto) and the Confidentiality Agreement represent the entire understanding and agreement among the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, arrangements, Contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the parties with respect to such subject matter (other than the Confidentiality Agreement). This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The parties hereto have voluntarily agreed to define their rights, Liabilities and obligations with respect to the transactions contemplated by this Agreement exclusively in contract pursuant to the express terms and provisions of this Agreement, and the parties hereto expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement. The sole and exclusive remedies for any breach of the terms and provisions of this Agreement (including any representations and warranties set forth herein, made in connection herewith or as an inducement to enter into this Agreement) or any claim or cause of action otherwise arising out of or related to the transactions contemplated by this Agreement shall be those remedies available at Law or in equity for breach of contract against the parties to this Agreement only (as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement), and the parties hereby agree that neither party hereto shall have any remedies or causes of action (whether in contract, tort or otherwise) for any statements, communications, disclosures, failures to disclose, representations or warranties not explicitly set forth in this Agreement.

9.4 Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect and the application of such invalid or unenforceable provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by Law.

9.5 Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but except as contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by any party without the prior written consent of the other party.

9.6 No Third-Party Beneficiaries.

(a) Except as provided in Section 9.6(b), this Agreement is not intended and shall not be deemed to confer upon or give any Person except the parties hereto and their respective successors and permitted assigns any remedy, claim, Liability, reimbursement, cause of action or other right under or by reason of this Agreement.

(b) The provisions of Sections 9.14, 9.15, and 9.16 are intended to be for the benefit of, and enforceable by, the persons referenced therein, and each such person shall be a third party beneficiary thereof.

9.7 Fees and Expenses. Subject to Section 2.1 and Section 5.7(e), whether or not the transactions contemplated by this Agreement are consummated, each party hereto shall pay all fees and expenses incurred by it or on its behalf in connection with this Agreement, and the consummation of the transactions contemplated hereby. Buyer shall be liable for and shall pay all applicable filing fees and other charges for the filings required under the HSR Act and any applicable non-US antitrust Laws by all parties.

9.8 Counterparts; Effectiveness. This Agreement may be executed manually, by electronic transmission, or by facsimile by the parties hereto, in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other party hereto.

9.9 Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted assigns and successors. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. All terms defined in this Agreement shall have

the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. No party, or its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against any party.

9.10 Governing Law. This Agreement and its negotiation, execution, performance or non-performance, interpretation, termination, construction and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement, or the negotiation and performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in connection with this Agreement or as an inducement to enter this Agreement) (each, a “**Covered Matter**”), shall be governed by, and construed in accordance with, the laws of the State of Delaware regardless of Laws that might otherwise govern under any applicable conflict of laws principles.

9.11 Forum; Service of Process. All Proceedings arising out of or relating to any Covered Matter shall be heard and determined in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably and unconditionally waive the defense of an inconvenient forum, or lack of jurisdiction to the maintenance of any such Proceeding. The consents to jurisdiction and venue set forth herein shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this Section 9.11 and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that the service of process upon such party in any Proceeding arising out of or relating to any Covered Matter shall be effective if notice is given by overnight courier at the address set forth in Section 9.1. Each of the parties also agrees that any final, non-appealable judgment against a party in connection with any Proceeding arising out of or relating to any Covered Matter shall be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the U.S. A certified or exemplified copy of such award or judgment shall be conclusive evidence of the fact and amount of such award or judgment.

9.12 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY COVERED MATTER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THE PARTIES HERETO ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. THE PARTIES HERETO FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS

CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.13 Specific Performance.

(a) The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the parties hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Buyer, on the one hand, and Seller, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction and that this shall include the right of Seller to cause Buyer, on the one hand, and the right of Buyer to cause Seller, on the other hand, to fully perform the terms of this Agreement to the fullest extent permissible pursuant to this Agreement and applicable Law and to thereafter cause this Agreement and the transactions contemplated hereby to be consummated on the terms and subject to the conditions thereto set forth in this Agreement. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise. Each of the parties hereto hereby waives (i) any defenses in any action for specific performance, including the defense that a remedy at Law would be adequate and (ii) any requirement under any Law to post a bond or other security as a prerequisite to obtaining equitable relief. If any party brings any action to enforce specifically the performance of the terms and provisions hereof by any other party, the Outside Date shall be automatically extended for so long as the party bringing such action is actively seeking a court order for an injunction or injunctions or to specifically enforce the terms and provisions of this Agreement.

(b) In the event that Seller brings an action for specific performance pursuant to this Section 9.13, and a court rules that Buyer breached this Agreement in connection with its failure to effect the Closing in accordance with Article II, but such court declines to enforce specifically the obligations of Buyer to effect the Closing in accordance with Article II, then, in addition to the right of Seller to terminate this Agreement pursuant to Section 7.1, Seller shall be entitled to pursue all applicable remedies at Law. For the avoidance of doubt, in no event shall the exercise of Seller's right to seek specific performance pursuant to this Section 9.13 reduce, restrict or otherwise limit Seller's right to terminate this Agreement pursuant to Section 7.1 and/or pursue all applicable remedies at Law.

9.14 Non-Recourse. Subject to this Section 9.14, this Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party to this Agreement (and then only to the extent of the specific obligations undertaken by such named party in this Agreement), no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, or other representative of any party hereto shall have any Liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose Liability of an entity party against its owners or Affiliates) for any obligations or Liabilities of any party hereto under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to have been made in connection herewith.

9.15 Legal Representation. Buyer hereby agrees its own behalf and on behalf of its directors, members, partners, officers, employees and Affiliates (including, after the Closing, the Company), and each of their successors and assigns (all such parties, the "**Waiving Parties**"), that Hinckley Allen & Snyder LLP (or any successor) may represent any or all of Seller or its Affiliates (the "**Seller Group**") or any director, member, partner, officer, employee or Affiliate of the Seller Group in connection with any dispute, litigation, claim, Proceeding or obligation arising out of or relating to this Agreement, any agreements contemplated by this Agreement or the transactions contemplated hereby or thereby (any such



representation, the “**Post-Closing Representation**”) notwithstanding its representation of the Company in connection with this Agreement and the transactions contemplated hereby, and Buyer on behalf of itself and the Waiving Parties hereby consents thereto and irrevocably waives (and will not assert) any conflict of interest arising therefrom or relating thereto in connection with the Post-Closing Representation, *provided, however*, that the parties agree to take all steps reasonably necessary to ensure that any attorney-client privilege attaching as a result of Hinckley Allen & Snyder LLP representing the Company will survive the Closing, and remain in effect and be controlled by the Company. Buyer, for itself and the Waiving Parties, hereby irrevocably acknowledges and agrees that all communications between the Seller Group and their counsel prior to the Closing, including Hinckley Allen & Snyder LLP, made substantially in connection with the negotiation, preparation, execution, delivery and performance under this Agreement, any agreements contemplated by this Agreement or the transactions contemplated hereby or thereby that were privileged communications between the Seller Group, the Company, and such counsel prior to the Closing, shall continue from and after the Closing to be privileged and that neither Buyer, the Waiving Parties, nor any Person purporting to act on behalf of or through Buyer or any of the Waiving Parties, will seek to obtain the same by any process. From and after the Closing, Buyer, on behalf of itself and the Waiving Parties, waives and will not assert any attorney-client privilege with respect to any communication between Hinckley Allen & Snyder LLP or any Person in the Seller Group occurring prior to the Closing in connection with any Post-Closing Representation.

9.16 **Release.** Effective as of the Closing Date, except for any rights or obligations under this Agreement or any instrument delivered in connection herewith, each of Buyer on behalf of itself and its Subsidiaries and Affiliates (including, after the Closing, the Company) and each of its current and former officers, directors, employees, partners, members, advisors, successors and assigns (collectively, the “**Releasing Parties**”), hereby irrevocably and unconditionally releases and forever discharges Seller, its Affiliates, each of their direct and indirect equityholders, and each of their respective current and former officers, directors, employees, partners, managers, advisors, successors and assigns (collectively, the “**Released Parties**”), of and from any and all actions, causes of action, suits, proceedings, executions, judgments, duties, debts, dues, accounts, bonds, Contracts and covenants (whether express or implied), and claims and demands whatsoever whether in Law or in equity which the Releasing Parties may have against each of the Released Parties, now or in the future, in each case in respect of any cause, matter or thing relating to any of the Released Parties occurring or arising on or prior to the date of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SELLER:

SCHNEIDER ELECTRIC HOLDINGS, INC.

By: /s/ Peter Wexler

Name: Peter Wexler

Title: President

[SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT]

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BUYER:

NOVANTA CORPORATION

By: /s/ Robert J. Buckley

Name: Robert J. Buckley

Title: CFO

[SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT]

STOCK PURCHASE AGREEMENT

among

NOVANTA CORPORATION,

NOVANTA TECHNOLOGIES (SUZHOU) CO. LTD,

ATI INDUSTRIAL AUTOMATION, INC.,

ATI INDUSTRIAL AUTOMATION (LANG FANG) CO., LTD.

and

THE SELLERS PARTY HERETO

Dated as of July 18, 2021

## **Table of Contents**

1.	DEFINITIONS; CERTAIN RULES OF CONSTRUCTION.	2
2.	PURCHASE AND SALE OF SHARES.	16
2.1.	<u>Purchase and Sale of Shares.</u>	16
2.2.	<u>The Closing.</u>	16
2.3.	<u>Enterprise Value.</u>	16
2.4.	<u>Estimated Purchase Price.</u>	17
2.5.	<u>Post-Closing Statement.</u>	17
2.6.	<u>Dispute Notice.</u>	17
2.7.	<u>Payment of Purchase Price Adjustment.</u>	18
2.8.	<u>Earn-Out.</u>	18
2.9.	<u>Withholding.</u>	21
3.	REPRESENTATIONS AND WARRANTIES REGARDING THE ACQUIRED COMPANIES.	21
3.1.	<u>Organization.</u>	21
3.2.	<u>Power and Authorization.</u>	21
3.3.	<u>Authorization of Governmental Authorities.</u>	22
3.4.	<u>Noncontravention.</u>	22
3.5.	<u>Capitalization of the Acquired Companies.</u>	22
3.6.	<u>Financial Matters.</u>	23
3.7.	<u>Absence of Undisclosed Liabilities.</u>	24
3.8.	<u>Absence of Certain Developments.</u>	24
3.9.	<u>Debt.</u>	24
3.10.	<u>Ownership of Assets; Sufficiency.</u>	24
3.11.	<u>Accounts Receivable; Accounts Payable.</u>	24
3.12.	<u>Real Property.</u>	25
3.13.	<u>Intellectual Property.</u>	26
3.14.	<u>Legal Compliance; Illegal Payments; Permits.</u>	29
3.15.	<u>Tax Matters.</u>	30
3.16.	<u>Employee Benefit Plans.</u>	32
3.17.	<u>ESOP.</u>	34
3.18.	<u>Environmental Matters.</u>	36
3.19.	<u>Contracts.</u>	37
3.20.	<u>Affiliate Transactions.</u>	39
3.21.	<u>Customers and Suppliers.</u>	39
3.22.	<u>Employees.</u>	40
3.23.	<u>Litigation; Government Orders.</u>	41
3.24.	<u>Product Warranties; Product Liability.</u>	42
3.25.	<u>Insurance.</u>	42
3.26.	<u>Powers of Attorney.</u>	43
3.27.	<u>Bank Accounts.</u>	43
3.28.	<u>No Brokers.</u>	43
3.29.	<u>Disclosure.</u>	43
4.	REPRESENTATIONS AND WARRANTIES REGARDING THE SELLERS.	43



4.1.	<u>Organization.</u>	44
4.2.	<u>Power and Authorization.</u>	44
4.3.	<u>Authorization of Governmental Authorities.</u>	44
4.4.	<u>Noncontravention.</u>	44
4.5.	<u>Title.</u>	44
4.6.	<u>No Brokers.</u>	45
5.	REPRESENTATIONS AND WARRANTIES OF THE BUYER.	45
5.1.	<u>Organization.</u>	45
5.2.	<u>Power and Authorization.</u>	45
5.3.	<u>Authorization of Governmental Authorities.</u>	45
5.4.	<u>Noncontravention.</u>	45
5.5.	<u>No Brokers.</u>	45
5.6.	<u>Investment Intention.</u>	45
5.7.	<u>Financial Resources.</u>	46
5.8.	<u>No Other Representations.</u>	46
6.	COVENANTS.	46
6.1.	<u>Further Assurances.</u>	46
6.2.	<u>Conduct of Business.</u>	46
6.3.	<u>Access to Information.</u>	49
6.4.	<u>Notices and Consents.</u>	49
6.5.	<u>Exclusivity.</u>	51
6.6.	<u>Update.</u>	51
6.7.	<u>Sellers' Consent.</u>	52
6.8.	<u>Transaction Expenses; Debt.</u>	52
6.9.	<u>Sellers' Release.</u>	52
6.10.	<u>Publicity.</u>	52
6.11.	<u>Restrictive Covenants.</u>	53
6.13.	<u>ESOP Matters.</u>	55
6.14.	<u>RWI Policy.</u>	57
6.15.	<u>Liquidation.</u>	57
7.	CONDITIONS TO CLOSING.	57
7.1.	<u>Conditions Precedent to Each Party's Obligations to Close.</u>	57
7.2.	<u>Conditions Precedent to Obligations of the Buyer.</u>	58
7.3.	<u>Conditions Precedent to Obligations of the Sellers.</u>	60
8.	INDEMNIFICATION.	61
8.1.	<u>Indemnification.</u>	61
8.2.	<u>Time for Claims.</u>	63
8.3.	<u>Third-Party Claims.</u>	63
8.4.	<u>Direct Claims.</u>	65
8.5.	<u>No Circular Recovery.</u>	65
8.6.	<u>Knowledge and Investigation.</u>	65
8.7.	<u>Manner of Payment.</u>	65
8.8.	<u>Tax Treatment.</u>	66
8.9.	<u>Exclusive Remedy.</u>	66
9.	TAX MATTERS.	66
9.1.	<u>Preparation of Tax Returns.</u>	66
9.2.	<u>Straddle Period.</u>	67



9.3.	<u>Tax Sharing Agreements.</u>	68
9.4.	<u>Cooperation on Tax Matters.</u>	68
9.5.	<u>338(h)(10) Election.</u>	68
9.6.	<u>Purchase Price Allocation.</u>	68
9.7.	<u>Transfer Taxes.</u>	68
9.8.	<u>Tax Refunds.</u>	69
9.9.	<u>Tax Gross-Up.</u>	69
10.	TERMINATION.	70
10.1.	<u>Termination.</u>	70
10.2.	<u>Effect of Termination.</u>	71
11.	MISCELLANEOUS.	71
11.1.	<u>Notices.</u>	71
11.2.	<u>Succession and Assignment; No Third-Party Beneficiary.</u>	72
11.3.	<u>Amendments and Waivers.</u>	73
11.4.	<u>Entire Agreement.</u>	73
11.5.	<u>Schedules.</u>	73
11.6.	<u>Counterparts.</u>	73
11.7.	<u>Severability.</u>	73
11.8.	<u>Headings.</u>	74
11.9.	<u>Construction.</u>	74
11.10.	<u>Governing Law.</u>	74
11.11.	<u>Jurisdiction; Venue; Service of Process.</u>	74
11.12.	<u>Specific Performance.</u>	75
11.13.	<u>Waiver of Jury Trial.</u>	75
11.14.	<u>Provisions Concerning the Sellers' Representative.</u>	75
11.15.	<u>Action as ESOP Trustee.</u>	76
11.16.	<u>Conflicts and Privilege.</u>	77

Exhibit A	Adjusted Standalone 2021 EBITDA Example Calculation
Exhibit B	China Lease Confirmation Letter
Exhibit C	Form of China Share Transfer Agreement
Exhibit D	Form of Escrow Agreement
Exhibit E	NC Lease
Exhibit F	Seller's Forecast for 2021 EBITDA
Exhibit G	Form of ESOP Trustee Certificate

GAAP Exceptions Schedule	
Key Employee Schedule	
Knowledge Parties Schedule	
Non-ESOP Sellers Schedule	
Restricted Persons Schedule	
Schedule 8.1.1(f)	Specified Indemnity Matters
Schedule 9.6	Purchase Price Allocation Schedule

Disclosure Schedules:	
Schedule 3.1	Organization





Schedule 3.3	Authorization of Governmental Authorities
Schedule 3.4	Noncontravention
Schedule 3.5	Capitalization of the Acquired Companies
Schedule 3.6	Financial Matters
Schedule 3.7	Absence of Undisclosed Liabilities
Schedule 3.8	Absence of Certain Developments
Schedule 3.9	Debt
Schedule 3.10	Ownership of Assets; Sufficiency
Schedule 3.12	Real Property
Schedule 3.13	Intellectual Property
Schedule 3.14	Legal Compliance; Illegal Payments; Permits
Schedule 3.15	Tax Matters
Schedule 3.16	Employee Benefit Plan
Schedule 3.17	ESOP
Schedule 3.18	Environmental Matters
Schedule 3.19	Contracts
Schedule 3.20	Affiliate Transactions
Schedule 3.21	Customers and Suppliers
Schedule 3.22	Employees
Schedule 3.23	Litigation; Government Orders
Schedule 3.24	Product Warranties; Product Liability
Schedule 3.25	Insurance
Schedule 3.26	Powers of Attorney
Schedule 3.27	Bank Accounts
Schedule 3.28	No Brokers
Schedule 4.3	Authorization of Governmental Authorities
Schedule 4.4	Noncontravention
Schedule 4.5	Title
Schedule 4.6	No Brokers
Schedule 6.2	Conduct of Business
Schedule 7.2.6(j)	Affiliated Contracts
Schedule 5.3	Authorization of Governmental Authorities [Buyer's Disclosure Schedule]

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement, dated as of July 18, 2021, (as amended or otherwise modified, this “Agreement”), is by and among Novanta Corporation, a Michigan corporation (the “U.S. Buyer”), Novanta Technologies (Suzhou) Co. Ltd., a limited liability company incorporated and existing under the Legal Requirements of China (the “China Buyer” and, together with the U.S. Buyer, the “Buyer”), ATI Industrial Automation, Inc., an North Carolina corporation (the “Company”), ATI Industrial Automation (Lang Fang) Co., Ltd., a limited liability company incorporated and existing under the Legal Requirements of China (the “China Subsidiary”), the ATI INDUSTRIAL AUTOMATION EMPLOYEE STOCK OWNERSHIP TRUST (the “ESOP Trust”), acting herein through GreatBanc Trust Company, not in an individual or corporate capacity but solely as trustee (the “ESOP Trustee”) of the ESOP Trust established in connection with the ATI INDUSTRIAL AUTOMATION EMPLOYEE STOCK OWNERSHIP PLAN (the “Plan”) (the Plan and the ESOP Trust referred to herein collectively as the “ESOP”), each of the Persons listed on the Non-ESOP Sellers Schedule hereto (collectively, the “Non-ESOP Sellers” and, together with the ESOP Trust, the “Sellers”) and BLDP, LLC, a North Carolina limited liability company, solely in its capacity as the Sellers’ Representative (the “Sellers’ Representative”).

### RECITALS

WHEREAS, (a) the ESOP Trust and the Non-ESOP Sellers are the record and beneficial owners of all of the outstanding shares of Capital Stock of the Company, which, as of the date hereof, consists of 63,000 shares of Common Stock of the Company, par value \$1.00 per share (the “Company Shares”) and (b) the Company is the record and beneficial owner of all of the registered capital of the China Subsidiary (the “China Shares” and, together with the Company Shares, the “Shares”);

WHEREAS, the Company desires to sell, transfer and deliver, and the China Buyer desires to acquire, all of the China Shares and any other Capital Stock of the China Subsidiary, subject to the terms and conditions set forth in this Agreement;

WHEREAS, the Sellers desire to sell, transfer and deliver, and the Buyer desires to acquire, all of the Company Shares and any other Capital Stock of the Company, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, at the Closing, (a) the China Buyer will purchase from the Company, and the Company will sell to the China Buyer, all of the China Shares and (b) immediately following the foregoing, the Buyer will purchase from the Sellers, and each Seller will sell to the Buyer, all of the Company Shares, in each case, subject to the terms and subject to the conditions set forth in this Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS; CERTAIN RULES OF CONSTRUCTION.

As used herein, the following terms will have the following meanings:

“1933 Act” means the Securities Act of 1933.

“Accounting Principles” means the following principles: (a) GAAP will apply, as in effect on the date of the Most Recent Balance Sheet and as applied by the Company in the Reviewed Financials; and (b) purchase accounting adjustments arising out of the Closing will be disregarded.

“Action” means any claim, action, cause of action, suit (whether in Contract or tort or otherwise), audit, litigation (whether at law or in equity, whether civil, criminal or administrative), controversy, assessment, grievance, arbitration, investigation, opposition, interference, hearing, mediation, charge, complaint, demand, notice, dispute or proceeding to, from, by or before any Governmental Authority.

“Acquired Companies” means, collectively, the Company and each of its direct and indirect Subsidiaries (including, for the avoidance of doubt, the China Subsidiary).

“Additional Obligation” is defined in Section 6.11.5.

“Adjusted Standalone 2021 EBITDA” means the income (or loss) before income Taxes of the Acquired Companies, on a consolidated basis, generated during the Earn-Out Period and after adding back or deducting therefrom only the line items used in the example calculation set forth in Exhibit A, in each case, calculated in accordance with GAAP, except as otherwise set forth on Exhibit A, and taking into account any other calculation methodologies or agreements as set forth on Exhibit A.

“Adjustment Escrow Amount” means an amount equal to \$2,000,000.

“Adjustment Escrow Sub-Account” is defined in Section 2.3.

“Affiliate” means, with respect to any specified Person at any time, (a) each Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person at such time, (b) each Person who is at such time an officer, manager or director of, or direct or indirect beneficial holder of at least 20% of any class of the equity interests of, such specified Person, (c) each Person that is managed by a common group of executive officers, managers and/or directors as such specified Person, (d) if such specified Person is an individual, the members of the immediate family of such Person, (e) the members of the immediate family of each officer, manager, director or holder described in clause (b) above and (f) each Person of which such specified Person or an Affiliate (as defined in the foregoing clauses (a) through (e)) thereof directly or indirectly beneficially owns at least 20% of any class of equity interests at such time. For the avoidance of doubt, neither GreatBanc Trust Company nor any qualified retirement plan or trust of which GreatBanc Trust Company is a trustee or other fiduciary (other than the ESOP Trust) shall be deemed to be an Affiliate of the Acquired Companies.

“Agreement” is defined in the Preamble.

“Ancillary Agreements” means the Escrow Agreement, the NC Lease and the China Share Transfer Agreement.

“Assets” means, with respect to each Acquired Company, such Acquired Company’s properties, rights and assets, whether real or personal, whether tangible or intangible and whether or not located on the Real Property or in the possession of any employee or service provider of an Acquired Company, including all assets reflected in the Most Recent Balance Sheet or acquired after the Most Recent Balance Sheet Date (except for such assets which have been sold or otherwise disposed of since the Most Recent Balance Sheet Date in the Ordinary Course of Business).

“Business” means the businesses conducted or actively being planned to be conducted by the Acquired Companies.

“Business Day” means any weekday other than a weekday on which banks in China and New York, New York are authorized or required to be closed.

“Buyer” is defined in the Preamble.

“Buyer Indemnified Person” is defined in Section 8.1.1.

“Cash and Cash Equivalents” means the cash and liquid cash equivalents (with original maturities of three (3) months or less) of the Acquired Companies as of the close of business on the date immediately preceding the Closing Date (provided it is not utilized to pay Debt, Transaction Expenses, a distribution or dividend to the Sellers or similar items or to satisfy any other liabilities not otherwise reflected on the Most Recent Balance Sheet after such time and prior to the Closing), determined in accordance with GAAP, calculated net of any outstanding checks, wires in transit and customer deposits or prepayments, and excluding any Restricted Cash.

“Cap” is defined in Section 8.1.1(iii).

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation and any and all ownership interests in a Person (other than a corporation), including membership interests, partnership interests, joint venture interests and beneficial interests, and any and all warrants, options or rights to purchase or otherwise acquire any of the foregoing.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–13 and any similar or successor legislation, executive order or executive memo relating to the COVID-19, as well as any applicable guidance issued thereunder or relating thereto (including, without limitation, IRS Notice 2020-65, 2020-38 IRB, and the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing Covid-19 Disaster, dated August 8, 2020), and any subsequent Legal Requirement intended to address the consequences of the COVID-19, including the Health and Economic Recovery Omnibus Emergency Solutions Act.

“Carveout Escrow Amount” means an amount equal to \$5,000,000; provided, that such amount may be reduced in accordance with Schedule 8.1.1(f).

“Carveout Escrow Sub-Account” is defined in Section 2.3.

“China” means the People’s Republic of China excluding, solely for the purposes of this Agreement, the Special Administrative Regions of Hong Kong and Macao and the territory of Taiwan.

“China Landlord” means Xianghe Peacock City Real Estate Development Co., Ltd.

“China Lease” means that certain the Premise Lease Contract, dated as of June 6, 2017, by and between the China Landlord and the China Subsidiary (as successor in interest to the Company).

“China Lease Confirmation Letter” means a confirmation letter in the form of Exhibit B.

“China Shares” is defined in the Recitals.

“China Share Transfer Agreement” means a local share transfer agreement between the China Buyer and the Company as may be required by the Governmental Authority in China to effect the China Subsidiary Acquisition substantially in the form of Exhibit C.

“China Subsidiary Acquisition” is defined in Section 2.1.1.

“Closing” is defined in Section 2.2.

“Closing Certificate” is defined in Section 2.4.

“Closing Date” means the date on which the Closing actually occurs.

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

“Company” is defined in the Preamble.

“Company 401(k) Plan” is defined in Section 6.13.6.

“Company Intellectual Property Rights” means all Intellectual Property Rights owned or purported to be owned by the Acquired Companies or used by the Acquired Companies in connection with the Business, including the Company Registrations and all Intellectual Property Rights in and to Company Technology.

“Company Plan” is defined in Section 3.16.2.

“Company Registrations” is defined in Section 3.13.3.

“Company Shares” is defined in the Recitals.

“Company Technology” means any and all Technology (a) used in connection with the Business or (b) owned or purported to be owned by the Acquired Companies, including, in each case, for the avoidance of doubt, any such Technology in the possession of any employee or service provider of an Acquired Company.

“Company’s Knowledge” (or similar phrase) means the knowledge after reasonable inquiry of any of the individuals listed on the Knowledge Parties Schedule attached hereto.

“Compensation” means, with respect to any Person, all wages, salaries, guaranteed payments, commissions, incentives, consulting fees, compensation, remuneration, bonuses or benefits of any kind or character whatever (including issuances or grants of equity interests), required to be made or

that have been made directly or indirectly by an Acquired Company to such Person or Affiliates of such Person or to any of such Person's beneficiaries.

"Confidential Information" means any and all information of the Acquired Companies except as limited by the last sentence hereof. Confidential Information also includes, without limitation, the information and data obtained by any Person during the period of such Person's employment by or affiliation with any Acquired Company concerning the Business and affairs of the Acquired Companies, information obtained as a result of such Person's direct or indirect ownership interest in the Acquired Companies, information concerning acquisition opportunities in or reasonably related to the Acquired Companies' Business or specialized industry information of which such Person becomes aware while employed or affiliated with any Acquired Company, the persons or entities that are current, former or prospective suppliers or customers of any one or more of them, as well as development, transition and transformation plans, methodologies and methods of doing business, strategic, marketing and expansion plans, including without limitation plans regarding planned and potential sales, financial and business plans, employee lists and telephone numbers, locations of sales representatives, new and existing programs and services, prices and terms, customer service, integration processes, requirements and costs of providing service, support and equipment, and any work product, summary, or other material in whatever form or medium prepared by such Person incorporating or derived from any of the foregoing. Confidential Information does not include information that is generally available to the public, other than through unauthorized disclosure by any Person or information that is lawfully and in good faith made available to a Person by a third party who is under no obligation of confidence to the Buyer or any of its Subsidiaries or Affiliates (including the Acquired Companies).

"Consolidated Group" is defined in Section 6.11.1.

"Contemplated Transactions" means, collectively, the transactions contemplated by this Agreement, including (a) the acquisition of the China Shares, (b) the acquisition of the Company Shares and (c) the execution, delivery and performance of the Ancillary Agreements.

"Contract" means, with respect to any Person, any contract, agreement, deed, mortgage, lease, sublease, license, indenture, note, bond, loan, guaranty, or other legally enforceable commitment, promise, undertaking, arrangement, or understanding, in each case whether written or oral, to which or by which such Person is a party or is otherwise bound (including, for the avoidance of doubt, purchase orders).

"Courts" is defined in Section 11.11.1.

"COVID-19" means the novel coronavirus disease, COVID-19 virus (SARS-COV-2 and all related strains and sequences) or mutation (or antigenic shift or drift) thereof or a disease or public health emergency resulting therefrom.

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," social distancing, shut down, closure, sequester or other action, in each case, required by any Governmental Authority in connection with or in response to COVID-19, including, but not limited to, the CARES Act.

“Debt” means, with respect to any Person and without duplication of any item included in the calculation of Transaction Expenses, all obligations (including all obligations in respect of principal, accrued interest, penalties, fees and premiums) of such Person (a) for borrowed money (including overdraft facilities) or in respect of loans or advances (including, in any case, any prepayment premiums due or arising as a result of the consummation of the Contemplated Transactions), (b) evidenced by notes, bonds, debentures or similar Contracts, (c) for deferred rent or the deferred purchase price of property, goods or services (other than trade payables or accruals incurred in the Ordinary Course of Business and reflected on the Post-Closing Statement, but including any deferred purchase price Liabilities, earnouts, contingency payments, installment payments, seller notes, promissory notes, or similar Liabilities, in each case, related to past acquisitions and, for the avoidance of doubt, in each case, whether or not contingent), (d) under capital leases (in accordance with GAAP), (e) in respect of letters of credit and bankers’ acceptances (in each case if drawn), (f) for deferred revenue, other than to the extent there is a corresponding amount of cash included in Restricted Cash for the specific deferred revenue liability, (g) amounts owed by the Company to any Person in connection with the redemption of Shares distributed out of the ESOP, (h) in respect of (1) deferred Compensation for services (including the employer portion of all Taxes arising with respect thereto, without regard to the ability of the Acquired Companies to defer such Taxes under the CARES Act), (2) any unsatisfied obligation for “withdrawal liability” to a “multiemployer plan” as such terms are defined under ERISA or (3) unpaid bonuses, commissions and other Compensation (whether or not due), including the employer portion of all Taxes arising with respect thereto, (i) in respect of outstanding severance or termination obligations to employees or other service providers whose employment or engagement was terminated prior to or as of the Closing (including the employer portion of all Taxes arising with respect thereto, without regard to the ability of the Acquired Companies to defer such Taxes under the CARES Act), (j) any payroll Tax obligations deferred under the CARES Act or otherwise in connection with the COVID-19, (k) for Contracts relating to interest rate protection, swap Contracts and collar Contracts (including the adjustment for any “in the money” value thereof), (l) in respect of all Pre-Closing Taxes, (m) in respect of outstanding fees, expenses or other amount owed to the ESOP or the ESOP Trustee, and (n) in the nature of guarantees of the obligations described in clauses (a) through (m) above of any other Person (other than an Acquired Company).

“Deductible” is defined in Section 8.1.2.

“Direct Claim” is defined in Section 8.4.

“Disclosed Contract” is defined in Section 3.19.2.

“Dispute Notice” is defined in Section 2.6.

“Earn-Out Payment” means an amount equal to (a) 15 *multiplied by* Adjusted Standalone 2021 EBITDA *minus* (b) \$172 million; provided, that if such amount is a negative number, the Earn-Out Payment shall be \$0.

“Earn-Out Period” means the 12-month fiscal period of the Acquired Companies ending December 31, 2021.

“Employee Plan” is defined in Section 3.16.1.



“Encumbrance” means any charge, claim, community or other marital property interest, condition, equitable interest, lien, license, option, pledge, security interest, mortgage, deed of trust, right of way, easement, encroachment, servitude, right of first offer or first refusal, buy/sell Contract and any other restriction, encumbrance or covenant with respect to, or condition governing the use, construction, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of, any other attribute of ownership.

“Enforceability Exceptions” means applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar Legal Requirements and principles of equity affecting creditors’ rights and remedies generally and enforceability which may be subject to equitable defenses and the discretion of the court.

“Enterprise Value” is defined in Section 2.3.

“Environmental Law” means any Legal Requirement relating to (a) releases or threatened releases of Hazardous Substances, (b) pollution or protection of the environment or protection of human health or safety (in relation to exposure to Hazardous Substances), or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances.

“ERISA” means the federal Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person treated at any relevant time as a single employer under Code Section 414 or Section 4001 of ERISA with any of the Acquired Companies.

“Escrow Agent” means PNC Bank, National Association.

“Escrow Agreement” means the escrow agreement substantially in the form of Exhibit D.

“ESOP” is defined in the Preamble.

“ESOP Amendment” means an amendment to the Plan effective as of the Closing Date providing that (a) the Plan no longer is required to be invested in Company Shares and that the benefits are not required to be distributed in the form of Company Shares; (b) the Plan shall no longer be considered an “employee stock ownership plan” (as defined in Section 4975 of the Code); (c) no employees may become participants or accrue benefits in the Plan on or after the Closing Date; (d) all ESOP participant account balances shall be fully vested as of the Closing Date; (e) any Earn-Out Payment received by the ESOP Trust will be allocated to the ESOP participants on the same basis as the Purchase Price, and (f) the ESOP (shall be converted into a defined contribution plan effective as of the Closing Date, and otherwise in form and substance reasonably satisfactory to the Buyer and the Company and the ESOP Trustee.

“ESOP Counsel” means Devine, Millimet & Branch, Professional Association.

“ESOP Fairness Opinion” means an opinion given to the ESOP Trustee by the ESOP Trustee’s Independent Financial Advisor to the effect that (a) the purchase price to be received by the ESOP Trust for the ESOP Shares held by the ESOP Trust and sold by the ESOP Trust pursuant to this Agreement is not less than the fair market value (as such term is used in determining “adequate consideration” under Section 3(18) of ERISA) of such ESOP Shares as of the Closing Date, and (b)



the terms of the Contemplated Transactions, taken as a whole, are fair and reasonable to the ESOP Trust from a financial point of view

“ESOP Loan” means the non-recourse exempt loan made by the Company to the ESOP Trust evidenced by that certain Promissory Note dated June 25, 2012 due June 30, 2027 in the original principal amount of \$16,000,000 and secured by the unallocated ESOP Shares.

“ESOP Shares” means the Company Shares owned by the ESOP Trust.

“ESOP Trust” is defined in the Preamble.

“ESOP Trustee” is defined in the Preamble.

“ESOP Trustee’s Independent Financial Advisor” means ComStock Advisors.

“Facilities” means any buildings, plants, improvements or structures located on the Real Property.

“Financials” is defined in Section 3.6.1(b).

“Fundamental Representations” means those representations and warranties set forth in Section 3.1 (Organization), Section 3.2 (Power and Authorization), Section 3.4 (Noncontravention), Section 3.5 (Capitalization of the Acquired Companies), Section 3.9 (Debt), Section 3.13.1 (Intellectual Property Ownership), Section 3.15 (Tax Matters), Section 3.18 (Environmental Matters), Section 3.27 (No Brokers), Section 4.2 (Power and Authorization), Section 4.5 (Title) and Section 4.6 (No Brokers).

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, except as set forth on the GAAP Exceptions Schedule attached hereto.

“Government Bid” means any quotation, bid or proposal by the Company that, if accepted or awarded, would lead to a Government Contract.

“Government Contract” means any Contract, task or delivery order, blanket purchase agreement, basic agreement or binding obligation (whether performed or not) between the Company, on one hand, and a Governmental Entity.

“Government Order” means any order, writ, judgment, verdict, injunction, decree, stipulation, ruling, decision, verdict, determination or award made, issued or entered by or with any Governmental Authority.

“Governmental Authority” means any Governmental Entity entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any mediator, arbitrator or arbitral body.

“Governmental Entity” means any United States or China federal, state or local or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission.

“Hazardous Substance” means any material or substance defined or regulated as a hazardous or toxic substance, material or waste or as a pollutant or contaminant, or words of similar intent or meaning, pursuant to any Environmental Law, or for which standards of conduct or liability may be imposed under Environmental Law due to its hazardous, toxic, dangerous or deleterious properties or characteristics.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Inbound IP Contracts” is defined in Section 3.13.4.

“Indemnity Escrow Amount” means an amount equal to \$851,000.

“Indemnity Escrow Sub-Account” is defined in Section 2.3.

“Intellectual Property Rights” means the entire right, title, and interest in and to all proprietary rights of every kind and nature however denominated, throughout the world, including (a) patents, copyrights, mask work rights, proprietary know-how, confidential information, trade secrets, Software database rights, and all other proprietary rights in Technology; (b) trademarks, trade names, service marks, service names, brands, trade dress and logos, and the goodwill and activities associated therewith; (c) social media accounts and handles, domain names, rights of privacy and publicity, and moral rights; (d) any and all registrations, applications, recordings, licenses, common-law rights, and contractual rights relating to any of the foregoing; and (e) all Actions and rights to sue at law or in equity for any past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto.

“Intentional Fraud” means, with respect to a party, an actual and deliberate knowing misrepresentation or omission of a material fact with respect to the making of any representation or warranty, (x) with respect to the Company or a Seller, in Article 3 or Article 4, or (y) with respect to Buyer, in Article 5, made with the intention that the other party will rely thereon to its detriment and upon which the other party actually and reasonably relies with resulting Losses.

“Interim Financials” is defined in Section 3.6.1(b).

“IP Contracts” is defined in Section 3.13.4.

“Key Employee” means each employee of an Acquired Company listed on the Key Employee Schedule attached hereto.

“Leased Real Property” is defined in Section 3.12.1.

“Legal Requirement” means any United States and China federal, state or local or any foreign constitution, law (including common law), statute, standard, ordinance, code, rule, regulation, resolution or promulgation, or any Government Order, or any license, franchise, permit or similar right granted under any of the foregoing, or any similar provision having the force or effect of law.

“Liability” means, with respect to any Person, any liability or obligation of such Person whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or

unliquidated, whether incurred or consequential, whether due or to become due and whether or not required pursuant to GAAP to be accrued on the financial statements of such Person.

“Losses” is defined in Section 8.1.1.

“MFS” means Manning, Fulton & Skinner, P.A., a North Carolina corporation.

“Material Adverse Effect” means any event, fact, condition, circumstance, occurrence, change in, or effect on, the Business, operations, Assets, condition (financial or otherwise), or results of operations of the Acquired Companies which, when considered either individually or in the aggregate together with all other adverse events, facts, conditions, circumstances, occurrence, changes or effects with respect to which such phrase is used in this Agreement, is, or can be reasonably expected to (a) materially and adversely affect the Sellers’ or the Company’s ability to consummate the Contemplated Transactions on a timely basis or (b) be materially adverse to the Business, operations, Assets, condition (financial or otherwise), or results of operations of the Acquired Companies, taken as a whole, or to the ability to operate the Business immediately after the Closing in the manner operated before Closing; provided, that none of the following events, facts, conditions, circumstances, occurrences, changes, or effects will be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur: (i) changes in the United States or world financial, banking or securities markets, including disruption thereof and any decline in the price of any security or market index or any change in the prevailing interest rates, or general economic conditions; (ii) any natural or man-made disaster or acts of God, including hurricanes, inclement weather, floods, fire and tornadoes; (iii) effects arising from war (whether or not declared), military actions or terrorism; (iv) any epidemic, pandemic or disease outbreak (including COVID-19 and COVID-19 Measures); (v) changes in Legal Requirements or changes in GAAP occurring after the date of this Agreement; (vi) general political conditions; (vii) any action required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Buyer; (viii) the announcement or pendency of the Contemplated Transactions; or (ix) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Material Adverse Effect and may be taken into consideration when determining whether a Material Adverse Effect has occurred); provided, that, notwithstanding the foregoing, any event, fact, condition, circumstance, occurrence, change or effect referred to in clauses (i), (ii), (iii), (iv), and (vi) immediately above will 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, occurrence, fact, condition, circumstance, change or effect has a materially disproportionate adverse effect on the Acquired Companies, taken as a whole, compared to other participants in the industries in which they operate.

“Most Recent Balance Sheet” is defined in Section 3.6.1(a).

“Most Recent Balance Sheet Date” is defined in Section 3.6.1(a).

“NC Lease” means the lease agreement attached as Exhibit E.

“Notice Period” is defined in Section 8.3.1.

“Off-the-Shelf Software” is defined in Section 3.13.4.

“Ordinary Course of Business” means an action taken by any Person in the ordinary course of such Person’s business that is consistent with the past customs and practices of such Person (including past practice with respect to quantity, amount, magnitude and frequency, standard employment and payroll policies and past practice with respect to management of working capital) in the normal day-to-day operations of such Person.

“Owned Real Property” is defined in Section 3.12.1.

“Outbound IP Contracts” is defined in Section 3.13.4.

“Passthrough Return” means an income Tax Return for an Acquired Company with respect to which the items of income and loss of the entity for which such Tax Return is filed flow through such entity to such entity’s owners, including any IRS Forms 1120-S (and any similar state, local or foreign Tax Returns).

“Payoff Letters” means duly executed payoff letters with respect to the Debt of the Acquired Companies required to be set forth on Schedule 3.9 to be paid in full at the Closing, which letters shall provide for the termination of all obligations of the Acquired Companies in respect of, and the automatic release of all Encumbrances relating to, such Debt and shall otherwise be reasonably acceptable in form and substance to the Buyer.

“Permits” means, with respect to any Person, any license, accreditation, bond, franchise, permit, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

“Permitted Encumbrance” means (a) statutory liens for current Taxes, special assessments or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with the Accounting Principles, (b) mechanics’, materialmen’s, carriers’, workers’, repairers’ and similar statutory liens arising or incurred in the Ordinary Course of Business and relating to amounts that are not yet due and payable and for which appropriate reserves have been established in accordance with the Accounting Principles, (c) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over any Owned Real Property which are not violated in any material respect by the current use and operation of the Owned Real Property or by the continued use and operation of the Owned Real Property in the Business, and do not adversely affect the value of the Owned Real Property in any material respect, (d) covenants, conditions, restrictions, easements, non-monetary Encumbrances and other similar matters of record affecting title to but not adversely affecting the value of, or the current occupancy or use of, the Owned Real Property in any material respect and (e) restrictions on the transfer of securities arising under federal and state securities laws.

“Person” means any individual or corporation, association, partnership, limited liability company, joint venture, joint stock or other company, business trust, trust, organization, Union, Governmental Authority or other entity of any kind.

“Personal Data” means any information that, alone or in combination with other information held by the Acquired Companies, allows the identification of or contact with a Person or can be used

to identify a Person and any other information that constitutes personal information under any applicable Legal Requirement.

“Plan” is defined in the Preamble.

“Plan Termination Date” is defined in Section 6.13.6.

“Polsinelli” means Polsinelli PC.

“Post-Closing Statement” is defined in Section 2.5.

“Pre-Closing Tax Period” means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period ending on and including the Closing Date.

“Pre-Closing Taxes” means an amount equal to the sum of (a) unpaid Taxes of the Acquired Companies for Pre-Closing Tax Periods and (b) Taxes incurred or to be incurred by the Acquired Companies attributable to income, gain, earnings or profits earned or accrued by a Subsidiary that is a “controlled foreign corporation” within the meaning of Code Section 957 during a Pre-Closing Tax Period that is included in gross income under Code Section 951(a)(1) or 951A (including, for the avoidance of doubt, any Tax payable after the Closing Date pursuant to Code Section 965), in each case as determined in accordance with Section 9.2, which amount shall be determined as of the end of the day on the Closing Date and shall not be less than zero (0) with respect to income Taxes (or franchise Taxes or margin Taxes imposed in lieu thereof) for any taxable period attributable to any particular Tax jurisdiction or any standalone taxpayer or group.

“Predecessor” is defined in Section 3.1.

“Preliminary ESOP Fairness Opinion” is defined in Section 3.17.9.

“Privacy Obligations” means applicable Legal Requirements, Contracts, self-regulatory standards, or written policies or terms of use of the Acquired Companies that are related to privacy, information security, data protection or the Processing of Personal Data, in each case as and to the extent applicable to the operation of their businesses.

“Privileged Communications” is defined in Section 11.16.

“Process” or “Processing” means any operation or set of operations which is performed on data, including Sensitive Data or sets of Sensitive Data, whether or not by automated means, such as the receipt, access, acquisition, collection, recording, organization, compilation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transfer, transmission, dissemination or otherwise making available, alignment or combination, restriction, disposal, erasure or destruction.

“Prohibited Transaction” means a “prohibited transaction” as defined in Section 406 of ERISA and Code Section 4975.

“Prospective Customer” means a potential customer or client that any member of the Consolidated Group has had active discussions with, on or within the twelve (12) months of the Closing Date.

“Purchase Price” is defined in Section 2.3.

“Purchase Price Allocation” is defined in Section 9.6.

“Real Property” is defined in Section 3.12.1.

“Real Property Leases” is defined in Section 3.12.1.

“Representative” means, with respect to any Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Restricted Cash” means any cash, commercial paper, certificates of deposit or other bank deposits, treasury bills, or any other cash equivalents, in each case, designated, separated, restricted by Legal Requirement, or otherwise earmarked for a particular use, purpose or event and not available for general corporate use, including any deposits held to secure lease obligations, workers compensation liabilities or customer deposits (other than customer deposits that are included in the calculation of Debt) or otherwise of the type commonly referred to as “restricted cash.”

“Restricted Period” is defined in Section 6.11.1.

“Restricted Person” means each of the individuals listed on the Restricted Persons Schedule attached hereto.

“Restricted Territory” means the entire United States and any other geographic area in which the Acquired Companies or their Affiliates has conducted, conducts or is actively planning to conduct the Business during the period of time when the applicable Restricted Person is providing services to or is employed by any Acquired Company and/or any of their Affiliates.

“Reviewed Financials” is defined in Section 3.6.1(a).

“RWI Policy” means the buyer-side representations and warranties insurance policy obtained by the Buyer (or an Affiliate thereof) in connection with this Agreement.

“SBA Notice” is defined in Section 6.12.

“Section 338 Forms” is defined in Section 9.5.

“Security Breach” means any (a) unauthorized acquisition of, access to, loss of, or misuse (by any means) of Personal Data or Sensitive Data; (b) unauthorized or unlawful Processing, sale, or rental of Personal Data or Sensitive Data; (c) act or omission that compromises the security, integrity, or confidentiality of Personal Data or Sensitive Data, or (d) phishing or other cyberattack that results in a monetary loss or a significant business disruption.

“Seller” and “Sellers” are defined in the Preamble.

“Sellers’ Representative” is defined in the Preamble.

“Sellers’ Representative Expense Amount” means an amount equal to \$1,250,000.

“Sellers’ Representative Expense Account” is defined in Section 2.3.

“Sensitive Data” means all (a) Personal Data that is subject to a Privacy Obligation, and (b) confidential or proprietary business information or trade secret information.

“Shares” is defined in the Recitals.

“Software” means computer software programs and databases, including all source code, object code, firmware, specifications, designs and documentation therefor.

“Specified Fundamental Representations” means the representations and warranties set forth in Section 3.13.1 (Intellectual Property Ownership), Section 3.15 (Tax Matters) and Section 3.18 (Environmental Matters).

“Specified Indemnity Matters” means the matters set forth on Schedule 8.1.1(f).

“Straddle Period” is defined in Section 9.2.

“Subsidiary” means, with respect to any specified Person, any other Person of which such specified Person will, at the time, directly or indirectly through one or more Subsidiaries, (a) own at least 50% of the outstanding Capital Stock entitled to vote generally, (b) hold at least 50% of the partnership, limited liability company, joint venture or similar interests or (c) be a general partner, managing member or joint venturer.

“Tax” or “Taxes” means (a) any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, escheat, unclaimed property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind or any charge of any kind in the nature of (or similar to) taxes whatsoever, including any interest, penalty, or addition thereto, in each case whether disputed or not and (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, as a result of any tax sharing or tax allocation Contract, or as a result of being liable for another Person’s taxes as a transferee or successor, by contract or otherwise.

“Tax Gross-Up Amount” is defined in Section 9.9.

“Tax Return” means any return (including any information return), report, declaration, statement, estimate, claim for refund, schedule, notice, form, or other document or information (whether in tangible, electronic or other form and including any related or supporting information) required to be filed with or submitted to any Governmental Authority in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax, including any supplement, appendix, exhibit or attachment thereto or amendment thereof.

“Technology” means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, customer and supplier lists, pricing and cost



information, business and marketing plans and proposals, graphics, illustrations, artwork, documentation, and manuals), databases, computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electronic, electrical, and mechanical equipment, and all other forms of technology, including improvements, modifications, works in process, derivatives, or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret Legal Requirements, or otherwise, and all documents and other materials recording any of the foregoing.

“Third-Party Claim” is defined in Section 8.3.1.

“Transaction Expenses” means (a) the costs, fees and expenses (including legal, accounting, investment banking, advisory and other costs, fees and expenses) of the Acquired Companies and the Sellers incurred or committed to in connection with the negotiation, execution and consummation of this Agreement and the Contemplated Transactions, and any severance, change of control payments, stay bonuses, retention bonuses, transaction bonuses, and other Compensation or similar Liabilities due or arising (either along or in combination with any other event) as a result of the execution of this Agreement or the consummation of the Contemplated Transactions, including the employer portion of all Taxes arising with respect thereto, without regard to the ability of the Acquired Companies to defer such Taxes under the CARES Act, (b) fifty percent (50%) of all costs, fees and expenses related to the Escrow Agreement, (c) fifty percent (50%) of all Transfer Taxes, except as set forth in Section 9.7 otherwise, and (d) all costs, fees and expenses (i) related to any directors and officers errors and omissions insurance and related “tail” or “extended reporting period” policies or costs incurred by the Company in connection with the fiduciary and/or other professional liability insurance coverage for the ESOP Trustee, acting in its capacity as such, and (ii) owed or payable to the ESOP or the ESOP Trustee following the Closing Date.

“Transfer” is defined in Section 2.8.3.

“Transfer Taxes” is defined in Section 9.7.

“Treasury Regulations” means the regulations promulgated under the Code, as amended.

“Union” means a labor union, labor organization or other employee representative body.

Except as otherwise explicitly specified to the contrary, (a) references to a Section, Article, Exhibit or Schedule means a Section or Article of, or Schedule or Exhibit to, this Agreement, unless another agreement is specified, (b) the word “including” will be construed as “including without limitation,” (c) references to a particular statute, rule or regulation include all rules and regulations thereunder and any predecessor or successor statute, rule or regulation, in each case as amended or otherwise modified from time to time, (d) words in the singular or plural form include the plural and singular form, respectively and (e) references to a particular Person include such Person’s successors and assigns to the extent not prohibited by this Agreement. Whenever this Agreement indicates that any document has been “made available” to the Buyer, such statement will be deemed to be a statement that such document was (i) delivered to the Buyer or its Representatives or (ii) made available for viewing online by the Buyer and its Representatives on the “ATI File Sharing / Smart 1362421” data room maintained by BMC Group VDR LLC (d/b/a BMC Group SmartRoom), in each case at least three (3) Business Days prior to the date hereof.



## 2. PURCHASE AND SALE OF SHARES.

### 2.1. Purchase and Sale of Shares.

2.1.1. At the Closing, subject to the terms and conditions of this Agreement, the Company will sell, transfer and deliver to the China Buyer, and the China Buyer will purchase from the Company, the China Shares, free and clear of all Encumbrances (other than Permitted Encumbrances) (the “China Subsidiary Acquisition”). The portion of the Purchase Price allocated to the China Subsidiary Acquisition will be determined by a third party valuation firm mutually agreed upon by the Buyer and the Sellers’ Representative. Notwithstanding the other provisions in this Section 2 concerning adjustment of the Purchase Price, all adjustments to the Purchase Price shall be made to the Purchase Price for the Company Shares and shall not adjust the Purchase Price of the China Shares.

2.1.2. Immediately following consummation of the China Subsidiary Acquisition, subject to the terms and conditions of this Agreement, each of the Non-ESOP Sellers and the ESOP Trust will sell, transfer and deliver to the U.S. Buyer, and the U.S. Buyer will purchase from the Non-ESOP Sellers and the ESOP Trust, the Company Shares, free and clear of all Encumbrances (other than Permitted Encumbrances), for the portion of the Purchase Price not allocated to the China Subsidiary Acquisition (the “U.S. Share Acquisition”).

2.2. The Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions set forth in Section 2.1 (the “Closing”) will take place at the offices of Ropes & Gray LLP at Prudential Tower, 800 Boylston Street, Boston, Massachusetts, 02199 (or remotely via the exchange of documents and signatures in PDF format), on the first Business Day following satisfaction (or, to the extent permitted, the waiver) of all conditions set forth in Article 7 (other than those that by their nature are to be satisfied at the Closing, but subject to satisfaction of all such conditions), or at such other place, time and date as may be agreed by the Buyer and the Company. The effective time of the Closing shall be deemed to be 5:00 p.m. Eastern Time on the Closing Date.

2.3. Enterprise Value. The aggregate consideration to be paid at Closing for the China Subsidiary Acquisition and the U.S. Share Acquisition will be an amount equal to \$172,000,000 (the “Enterprise Value”), subject to adjustment in accordance with Section 2.4 and Section 9.9. Such amount will be paid by wire transfer of immediately available federal funds to the accounts and in the amounts specified by the Sellers’ Representative to the Buyer not fewer than two (2) Business Days prior to the Closing (and the parties hereby acknowledge and agree that the Buyer will be entitled to rely on such specified instructions and allocations and, upon transfer of such funds pursuant to the instructions provided by the Sellers’ Representative, except for any adjustments in accordance with Section 2.7, the Buyer will have no further Liability for the payment of any portion of the Enterprise Value), as follows: (a) first, to the holders of the Debt of the Acquired Companies as of the Closing, the aggregate amount necessary to satisfy and extinguish all such Debt; (b) second, to those Persons designated by the Sellers’ Representative, the aggregate amount required to pay and satisfy in full all Transaction Expenses; (c) third, to the Escrow Agent, (i) the Indemnity Escrow Amount (such amount to be placed within a sub-account referred to herein as the “Indemnity Escrow Sub-Account”), (ii) the Adjustment Escrow Amount (such amount to be placed within a sub-account referred to herein as the “Adjustment Escrow Sub-Account”) and (iii) the Carveout Escrow Amount (such amount to be placed within a sub-account referred to herein as

the “Carveout Escrow Sub-Account”); (d) fourth, to an account controlled by the Sellers’ Representative (the “Sellers’ Representative Expense Account”), the Sellers’ Representative Expense Amount; and (e) fifth, after payment of the amounts specified in clauses (a) through (d) above, to the ESOP Trust and the Non-ESOP Sellers in respect of the Company Shares, upon delivery to the Buyer of certificates evidencing the Company Shares duly endorsed (or accompanied by duly executed stock transfer powers), the remainder of the Enterprise Value (such aggregate amount payable to the holders of the Company Shares, as further adjusted in accordance with Article 2 (other than Section 2.8), the “Purchase Price”).

2.4. Estimated Purchase Price. No later than three (3) Business Days prior to the Closing Date, the Company will cause to be prepared and delivered to the Buyer (a) a certificate (which will be subject to the review and approval of the Buyer) of an officer of the Company, setting forth the Company’s good faith estimate of, in each case prepared in accordance with GAAP, of (i) the Debt of the Acquired Companies as of the Closing (including a schedule of the aggregate amount of Debt of the Acquired Companies in each country), (ii) Cash and Cash Equivalents and Restricted Cash (including a schedule of the aggregate amount of Cash and Cash Equivalents and Restricted Cash in each country), (iii) the Transaction Expenses and (iv) the Purchase Price (such certificate, the “Closing Certificate”) and (b) any documents pertaining to or used in connection with the preparation of the Closing Certificate. The Buyer and its Representatives will be given reasonable access to all of the Acquired Companies’ books and records relating to the preparation of the Closing Certificate. For the purposes of making payments under Section 2.3 at the Closing, the Enterprise Value will be increased by the estimated amount of Cash and Cash Equivalents.

2.5. Post-Closing Statement. As promptly as reasonably possible, and in any event within ninety (90) days after the Closing Date, the Company will prepare or cause to be prepared, and will provide to the Sellers’ Representative and the ESOP Trustee, a written statement, prepared in accordance with the GAAP, setting forth in reasonable detail its determination of (a) the Debt of Acquired Companies as of the Closing, (b) Cash and Cash Equivalents and Restricted Cash, (c) the Transaction Expenses and (d) the Purchase Price (the “Post-Closing Statement”).

2.6. Dispute Notice. The Post-Closing Statement will be final, conclusive and binding on the parties hereto for purposes of this Article 2 unless the Sellers’ Representative provides a written notice to the Company no later than the thirtieth (30<sup>th</sup>) day after delivery of the Post-Closing Statement setting forth in reasonable detail (a) any item on the Post-Closing Statement that the Sellers’ Representative believe has not been prepared in accordance with GAAP and (b) the correct amount of such item in accordance with GAAP and the calculation thereof (a “Dispute Notice”). Any item or amount to which no dispute is raised in the Dispute Notice will be final, conclusive and binding on the parties hereto for purposes of this Article 2. The Company and the Sellers’ Representative will attempt to resolve the matters raised in a Dispute Notice in good faith. No earlier than fifteen (15) Business Days after delivery of the Dispute Notice, either the Company or the Sellers’ Representative may provide written notice to the other that it elects to submit the disputed items to a nationally recognized independent accounting firm chosen jointly by the Company and the Sellers’ Representative (the “Independent Referee”). In the event that the Company and the Sellers’ Representative are unable to jointly select an Independent Referee, then each of the Company and the Sellers’ Representative will promptly (but in any event within ten (10) Business Days after delivery of the notice to engage an Independent Referee) select an independent accounting firm that represents private companies of a size comparable to the Company and will promptly (but in any event within twenty (20) Business Days after delivery of the notice to engage

an Independent Referee) cause such two (2) accounting firms to jointly select a third (3rd) independent accounting firm that represents private companies of a size comparable to the Company to act as the Independent Referee. The Independent Referee will promptly review only those items and amounts specifically set forth and objected to in the Dispute Notice and resolve the dispute with respect to each such specific item and amount in accordance with GAAP (*i.e.*, not on the basis of an independent review); provided, that the Independent Referee will not assign a value to any item greater than the greatest value for such item, or lower than the lowest value for such item, claimed in the Post-Closing Statement or the Dispute Notice. The fees and expenses of the Independent Referee will be paid by the Sellers from the Sellers' Representative Expense Account, on the one hand, and by the Buyer, on the other hand, in inverse proportion to their success on the merits in the resolution of the items in dispute, and the decision of the Independent Referee with respect to the items of the Post-Closing Statement disputed by the Dispute Notice and submitted to it will be final, conclusive and binding on the parties hereto for purposes of this Article 2. Each of the parties to this Agreement agrees to use its commercially reasonable efforts to cooperate with the Independent Referee and to cause the Independent Referee to resolve any disputed items no later than thirty (30) Business Days after selection of the Independent Referee.

2.7. Payment of Purchase Price Adjustment. Promptly, and in any event no later than the fifth (5<sup>th</sup>) Business Day, after final determination of the Purchase Price in accordance with Section 2.6:

2.7.1. if the final Purchase Price exceeds the estimated Purchase Price set forth in the Closing Certificate, then the Buyer will pay such excess amount to the ESOP Trust and the Non-ESOP Sellers by wire transfer of immediately available funds; and

2.7.2. if the final Purchase Price is less than the estimated Purchase Price set forth in the Closing Certificate, then an amount equal to such shortfall will be paid to the Buyer (a) first, from the Adjustment Escrow Sub-Account in accordance with the terms of the Escrow Agreement and (b) second, if the Adjustment Escrow Sub-Account is depleted in connection with the application of the foregoing clause (a) the remainder of such amount, at the election of the Buyer, (x) from the Indemnity Escrow Sub-Account in accordance with the terms of the Escrow Agreement or (y) by setting off against any other amounts otherwise due and payable by the Buyer to Sellers, including any Earn-Out Payment.

2.7.3. Any payments with respect to adjustments made pursuant to this Section 2.7 shall be treated as an adjustment to the cash purchase price for federal, state, local and foreign income Tax purposes except to the extent required by applicable Legal Requirements to be characterized as interest payments or in accordance with a "determination" (within the meaning of Code Section 1313(a)(1)).

2.8. Earn-Out.

2.8.1. Following the Closing, Sellers, in accordance with their percentage ownership of the Company Shares, will be eligible to receive from the Company (subject to the terms and conditions set forth in this Section 2.8) the Earn-Out Payment, if any, based on the terms and conditions forth below.

2.8.2. The Earn-Out Payment shall be determined and paid as set forth below:

(a) Earn-Out Statement. On or prior to March 31, 2022, the Buyer shall deliver to the Sellers' Representative a statement, certified by the Buyer's chief financial officer (an "Earn-Out Statement"), setting forth Buyer's calculation of the Company's Adjusted Standalone 2021 EBITDA and the Buyer's calculation of the Earn-Out Payment, in accordance with the sample calculation and methodologies set forth on Exhibit A hereto.

(b) Earn-Out Payment. The Earn-Out Payment amount (if any) shall be paid to the Sellers by Buyer, within fifteen (15) days of the final determination of the Earn-Out Payment as set forth in Section 2.8.2(c) below.

(c) Earn-Out Dispute Resolution. Within sixty (60) days following receipt by the Sellers' Representative of the Earn-Out Statement, the Sellers' Representative and its Representatives shall have the right to examine the relevant books and records of the Acquired Companies for the Earn-Out Period to verify the accuracy of the items in such Earn-Out Statement. If no objection from the Sellers' Representative is made within such sixty (60)-day period, or if the Sellers' Representative notifies the Buyer in writing that it has no objection to the Earn-Out Statement, then such Earn-Out Statement shall be deemed final and shall be deemed the final determination contemplated by Section 2.8.2(b). If, within such sixty (60)-day period, the Sellers' Representative sends to the Buyer in writing objections to one or more computations or recomputations of the Company's Adjusted Standalone 2021 EBITDA, then the parties shall use their commercially reasonable efforts to resolve such dispute and their resolution shall be deemed the final determination contemplated by Section 2.8.2(b). If within thirty (30) days after the Buyer's receipt of the objections of the Sellers' Representative, the parties are not able to resolve such dispute, then the matter shall be submitted to the Independent Referee to resolve the matter or matters in dispute between them and determine the Company's Adjusted Standalone 2021 EBITDA; provided, that the Independent Referee shall not make adjustments with respect to any calculations or determinations as to which the Sellers' Representative has not specifically objected in writing to the Buyer unless necessary by reason of the Independent Referee's resolution of the differences between the parties. The decision of the Independent Referee as herein provided shall be conclusive, binding and final upon the parties hereto and the parties shall have no recourse to judicial intervention in respect of its determination of the Company's Adjusted Standalone 2021 EBITDA and such determination shall be deemed the final determination contemplated by Section 2.8.2(b). The Buyer and the Sellers' Representative shall each pay their own costs and expenses incurred under this Section 2.8.2. The fees and expenses of the Independent Referee will be paid by the Sellers from the Sellers' Representative Expense Account, on the one hand, and by the Buyer, on the other hand, in inverse proportion to their success on the merits in the resolution of the items in dispute.

2.8.3. The right of the Sellers to receive any Earn-Out Payment (i) is solely a contractual right and is not a security for purposes of any federal or state securities laws (and shall confer upon the Sellers only the rights of a general unsecured creditor under applicable state law); (ii) will not be represented by any form of certificate or instrument; (iii) does not give the Sellers any dividend rights, voting rights, liquidation rights, preemptive rights or other rights common to holders of the Buyer's or its Affiliates' equity interests; (iv) are not redeemable; and (v) may not be sold, assigned, pledged, gifted, conveyed, transferred or otherwise disposed of (a "Transfer"), except that if the ESOP Trust is merged into another qualified retirement plan in accordance with ERISA, the ESOP Trust's right to receive any

Earn-Out Payment shall be assigned to such successor plan for allocation to the ESOP participants in accordance with the ESOP Amendment. Any Transfer in violation of this Section 2.8.3 shall be null and void.

2.8.4. Subject to Section 2.8.5 below, the parties hereto acknowledge that, following the Closing, it is the intention of the parties hereto that the operation of the Acquired Companies' business in all respects shall be exercised by the Buyer and its Affiliates in accordance with its or their own business judgment and in its or their sole and absolute discretion. Following the Closing, by execution of this Agreement, in exchange for the consideration set forth herein, but subject to Section 2.8.5 below, the Sellers and their Affiliates and the Sellers' Representative acknowledge, understand and agree as follows: (i) the Buyer and its Affiliates shall have complete control and sole discretion with respect to operation of the Buyer's and its Subsidiaries' businesses, and that this may have a material effect upon the Adjusted Standalone 2021 EBITDA, the achievability of the Earn-Out Payment and the payment of the Earn-Out Payment, if any, that may be payable hereunder and such control and discretion by Buyer and its Affiliates could result in the Earn-Out Payment not being made, (ii) the Buyer and its Affiliates have no obligation to use efforts to cause any portion of the Earn-Out Payment to be earned, and (iii) the achievement of the Earn-Out Payment is uncertain and that Buyer and the Company may not achieve results requiring the payment of any Earn-Out Payment at all, and it is therefore not assured that Buyer will be required to pay any Earn-Out Payment. Except as set forth in Section 2.8.5 below, the parties agree that the obligations set forth in this Section 2.8.4 are the sole obligations, express or implied, relating to the efforts of Buyer regarding the Earn-Out Payment, and that neither Buyer nor any of its Affiliates or Representatives has furnished or provided, whether written or oral, any assurances or commitments regarding the achievability of the condition to the payment of any of the Earn-Out Payment or the likelihood thereof, and each Seller expressly disclaims any rights with respect to any such assurances or commitments.

2.8.5. Notwithstanding the terms of Section 2.8.4 above or otherwise, after Closing and solely during the Earn-Out Period, the Buyer (a) shall not, directly or indirectly, take any actions in bad faith with a specific intent of avoiding or reducing the Earn-Out Payment, without the prior written consent of the Sellers' Representative (which consent shall not be unreasonably withheld) and (b) shall use commercially reasonable efforts to permit the retained management team of the Acquired Companies to operate the Business as resourced and budgeted in the Seller's Forecast for 2021 EBITDA attached hereto as Exhibit F; provided that, the obligation in clause (b), shall not prevent the Buyer from causing the Acquired Companies to (i) comply with Legal Requirements and with policies and procedures applicable to Buyer's global risk and compliance programs, and (ii) collaborate with other Buyer colleagues to strengthen the performance of the Acquired Companies. Buyer represents, warrants and covenants that none of Buyer's or its Affiliates' existing credit agreements, lines of credit, loans or similar arrangements will prohibit payment of the Earn-Out Payments when due and payable. Notwithstanding the foregoing, clause (b) of the first sentence of this Section 2.8.5 shall not permit, or be interpreted to permit, the management teams of the Acquired Companies to pull forward customer orders from 2022 into 2021, or delay expenses or hires that should be incurred in 2021 with a specific intent to increase the Adjusted Standalone 2021 EBITDA.



2.8.6. U.S. Buyer hereby guarantees the full, complete and timely performance by the Company of its payment obligation under this Section 2.8 if due and payable. The guaranty contained in this Section 2.8.6 is a guaranty of payment and not of collection. Notwithstanding any other provision of this Section 2.8.6, the Earn-Out Payment, if any, shall be an addition to the purchase price paid to the Sellers by the U.S. Buyer in exchange for the Company Shares for all foreign, federal and state income tax purposes.

2.9. Withholding. The Buyer and any other applicable withholding agent will be entitled to deduct and withhold, or cause the Escrow Agent to deduct and withhold, from any amounts payable pursuant to this Agreement any withholding Taxes or other amounts required under the Code or any applicable Legal Requirement to be deducted and withheld. To the extent that any such amounts are so deducted or withheld, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Notwithstanding anything to the contrary herein, any compensatory payments to current or former employees payable in connection with the Contemplated Transactions will be made through the payroll system of the applicable Acquired Company, subject to applicable withholding.

### 3. REPRESENTATIONS AND WARRANTIES REGARDING THE ACQUIRED COMPANIES.

In order to induce the Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, the Company represents and warrants to the Buyer, as of the date hereof and as of the Closing Date, as follows:

3.1. Organization. Schedule 3.1 sets forth for each Acquired Company its name, jurisdiction of organization and a true and correct list of its managers, directors and officers. Each Acquired Company is (a) duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and (b) duly qualified to do business and in good standing in each jurisdiction where such qualification is required, except where the failure to so qualify has not had, and is not reasonably likely to have, a Material Adverse Effect. The Company has delivered, or with respect to the minute books will deliver at Closing, to the Buyer true, accurate and complete copies of (x) the organizational documents of each Acquired Company and (y) minute books of each Acquired Company, to the extent thereof which contain records of all meetings held of, and other corporate or other entity actions taken by, its stockholders (or equity holders), board of directors (or equivalent body) and any committees appointed by its board of directors (or equivalent body). Schedule 3.1 also sets forth a list of (a) any Person that has merged with or into an Acquired Company, (b) any Person a majority of whose Capital Stock has been acquired by an Acquired Company, (c) any Person all or substantially all of whose assets have been acquired by an Acquired Company and (d) any prior names of an Acquired Company or any Person described in the foregoing clauses (a) through (c) (each such Person, a “Predecessor”).

3.2. Power and Authorization. The execution, delivery and performance by each Acquired Company of this Agreement and each Ancillary Agreement to which it is (or will be) a party and the consummation of the Contemplated Transactions are within the power and authority of each Acquired Company and have been duly authorized by all necessary action on the part of each Acquired Company. This Agreement and each Ancillary Agreement to which each Acquired Company is (or will be) a party (a) has been (or, in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) duly executed and delivered by each Acquired Company and

(b) is (or, in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) a legal, valid and binding obligation of such Acquired Company, enforceable (subject to the Enforceability Exceptions) against each such Acquired Company in accordance with its terms. Each Acquired Company has the full power and authority necessary to own and use its Assets and carry on the Business.

3.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 3.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, or notice to, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by any Acquired Company of this Agreement and each Ancillary Agreement to which it is (or will be) a party or (b) consummation of the Contemplated Transactions by each Acquired Company.

3.4. Noncontravention. Except as disclosed on Schedule 3.4, neither the execution, delivery and performance by an Acquired Company or any Seller of this Agreement or any Ancillary Agreement to which he, she or it is (or will be) a party nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval), or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 3.3, violate any Legal Requirement applicable to an Acquired Company; (b) result in the modification, acceleration, termination, breach or violation of, or default under, any Contract of any Acquired Company; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contract of any Acquired Company; (d) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, any Asset; or (e) result in a breach or violation of, or default under, the organizational documents of any Acquired Company.

3.5. Capitalization of the Acquired Companies. The entire authorized Capital Stock of each Acquired Company is as set forth on Schedule 3.5. All of the outstanding shares or other units of Capital Stock of each Acquired Company have been duly authorized, validly issued, and are fully paid and non-assessable. None of the Acquired Companies has violated the 1933 Act, any state “blue sky” or securities laws, any other similar Legal Requirement or any preemptive or other similar rights, or any claims thereof, of any Person in connection with the issuance or redemption of any of its equity interests. No Acquired Company holds any shares of its Capital Stock in its treasury. All of the outstanding equity interests of the Company are held of record and beneficially owned by the Persons and in the respective amounts set forth on Schedule 3.5. The Company has delivered to the Buyer true, accurate and complete copies of the ledger of the Company and the China Subsidiary, which reflects all issuances, transfers, repurchases, redemptions and cancellations of shares (or other units) of its Capital Stock. All of the Company’s Subsidiaries have been solely owned by the Company from the date of formation or organization. All of the outstanding equity interests in each of the Company’s Subsidiaries are set forth on Schedule 3.5 and are validly issued, fully paid and non-assessable. The Company is the beneficial owner (and the Company or the Company’s Subsidiary listed on Schedule 3.5 is the record owner) of all of the equity interests in the Company’s Subsidiaries and holds such equity interests free and clear of all Encumbrances except as are imposed by applicable securities laws. Except as disclosed on Schedule 3.5: (a) there are no preemptive rights or other similar rights in respect of any equity interests in any Acquired Company, (b) except as imposed by applicable securities laws, there are no Encumbrances on, or other Contracts relating to, the ownership, transfer or voting of any equity interests in any Acquired Company, or otherwise affecting the rights of any holder of the equity interests in any

Acquired Company, (c) except for the Contemplated Transactions, there is no Contract, or provision in the organizational documents of any Acquired Company, which obligates it to purchase, redeem or otherwise acquire, or make any payment in cash, kind or otherwise (including any dividend or distribution) in respect of, any equity or equity-based interests in any Acquired Company and (d) there are no existing rights with respect to registration under the 1933 Act of any equity interests in any Acquired Company. No Acquired Company directly or indirectly owns or controls, and has never directly or indirectly owned, any Capital Stock in any Person which is not a Subsidiary of the Company.

### 3.6. Financial Matters.

3.6.1. Financial Statements. Attached to Schedule 3.6.1 are copies of each of the following:

(a) the consolidated balance sheet of the Acquired Companies as at December 31, 2020 (respectively, the “Most Recent Balance Sheet,” and the “Most Recent Balance Sheet Date”), December 31, 2019 and December 31, 2018 and the related consolidated statements of income, cash flow and changes in equity of the Acquired Companies for the fiscal years then ended, in each case as reviewed by the Acquired Companies’ independent accountant, accompanied by any notes thereto and the report of the Acquired Companies’ independent accountant (collectively, the “Reviewed Financials”); and

(b) the trial balances and consolidated revenue as of and for the five (5) months ended May 31, 2021 (the “Interim Financials” and, together with the Reviewed Financials, the “Financials”).

3.6.2. Compliance with Accounting Principles, etc. Except as disclosed on Schedule 3.6.2, (a) the Financials (including any notes thereto) (i) are accurate and complete and were prepared in good faith and in accordance with the books and records of the Acquired Companies (which books and records were and are accurate and complete and reflect actual, bona fide transactions) and (ii) fairly present the consolidated financial position of the Acquired Companies as at the respective dates thereof and the consolidated results of the operations of the Acquired Companies and changes in financial position for the respective periods covered thereby and (b) the Reviewed Financials have been prepared in accordance with the Accounting Principles, consistently applied.

3.6.3. Inventory. All inventory of the Acquired Companies consists of a quality, quantity, and condition usable and salable at normal prices or profit margins in the Ordinary Course of Business, except to the extent of any reserves reflected on the Most Recent Balance Sheet. Except as set forth on Schedule 3.6.3, none of the inventory reflected on the Most Recent Balance Sheet is obsolete below-standard quality and none of the inventory has been written off or written down to net realizable value in the Most Recent Balance Sheet. The quantities of each item of inventory (whether raw materials, work-in-process, or finished goods) are not excessive, but are reasonable in the present circumstances of the Acquired Companies. Except as disclosed on Schedule 3.6.3, the inventory of the Acquired Companies is located entirely in the Facilities. To the Company’s Knowledge, all finished goods are free of any material defect or deficiency.



3.7. Absence of Undisclosed Liabilities. No Acquired Company has any Liabilities, except for (a) Liabilities set forth on the face of the date of the most recent Reviewed Financials, (b) Liabilities incurred in the Ordinary Course of Business since the Most Recent Balance Sheet Date (none of which results from, arises out of, or relates to any tort or infringement or breach or violation of, or default under, a Contract or Legal Requirement), (c) executory obligations under Contracts (none of which Liabilities relate to any breach of contract, breach of warranty, tort, infringement or violation of a Legal Requirement) and (d) Liabilities set forth on Schedule 3.7.

3.8. Absence of Certain Developments. Since the Most Recent Balance Sheet Date and except as provided in this Agreement, the Business has been conducted in the Ordinary Course of Business and, except for the matters disclosed on Schedule 3.8, no Acquired Company has taken any action, nor have any events, facts or circumstances occurred, that would have been in violation of, or prohibited by, Section 6.2 hereof if such action, event, facts or circumstances has occurred after the date hereof.

3.9. Debt. None of the Acquired Companies has any Liabilities in respect of Debt except as set forth on Schedule 3.9. For each item of Debt, Schedule 3.9 correctly sets forth the debtor, the principal amount of the Debt, the creditor, the maturity date, and the collateral, if any, securing the Debt.

3.10. Ownership of Assets; Sufficiency. The Acquired Companies have sole and exclusive, good and marketable title to, or, in the case of property held under a lease or other Contract, a sole and exclusive, enforceable (subject to the Enforceability Exceptions) leasehold interest in, or right to use, all of the tangible personal property used in the Business. The Assets comprise all of the assets, properties and rights of every type and description used in or necessary to the conduct of the Business and are adequate and sufficient to conduct the Business. All material items of machinery, equipment and other tangible assets of the Acquired Companies are adequate and fit to be used for the purposes for which they are currently used in the manner they are currently used, are in good operational working order, operating condition and state of repair (ordinary wear and tear excepted), and have been installed, serviced and maintained in accordance with industry standards and in a manner that would not void or limit the coverage of any warranty thereon. Except as disclosed on Schedule 3.10, none of the real or personal property of the Acquired Companies is subject to any Encumbrance other than any Permitted Encumbrance.

3.11. Accounts Receivable; Accounts Payable.

3.11.1. Accounts Receivable. All accounts and notes receivable reflected on the Most Recent Balance Sheet, have arisen or will arise in the Ordinary Course of Business and, to the Company's Knowledge, (a) there are no material disputes, contests, claims, counterclaims, or setoffs with respect to such accounts and notes receivable that have not been reserved for in the Financials and (b) all such accounts and notes receivable have been, or will be, collected or are, or will be, collectible in the aggregate recorded amounts thereof in accordance with their terms (subject to any applicable reserves reflected on the Most Recent Balance Sheet).

3.11.2. Accounts Payable. All accounts and notes payable of the Company, whether reflected on the Most Recent Balance Sheet or subsequently created, are valid payables that have arisen from bona fide transactions in the Ordinary Course of Business consistent with

past practices. Since the Most Recent Balance Sheet Date, the Company has paid its accounts and notes payable in the Ordinary Course of Business and in a manner which is consistent with past practices.

### 3.12. Real Property.

3.12.1. Schedule 3.12 sets forth a true, correct and complete list, including addresses, of (a) all real property owned or previously owned in fee by any of the Acquired Companies (the “Owned Real Property”) and (b) each leasehold interest in real property leased, subleased, or licensed to or by, or for which a right to use or occupy has been granted to or by, any of the Acquired Companies (the “Leased Real Property”, and together with the current Owned Real Property, the “Real Property”). Schedule 3.12 also identifies, (i) with respect to each Owned Real Property, the Acquired Company that is the owner or former owner of such Owned Real Property, and (ii) with respect to each Owned Real Property that is currently owned by any of the Acquired Companies, the tax identification number(s) for such Owned Real Property and all Persons that use or occupy such Owned Real Property in addition to the owner, if any. Schedule 3.12 also identifies, with respect to each Leased Real Property, each lease, sublease, license or other Contract (including all amendments and modifications thereto) under which such Leased Real Property is occupied or used, including the date of and legal name of each of the parties to such lease, sublease, license or other Contract (each a “Real Property Lease”, and collectively, the “Real Property Leases”). The Real Property comprises all of the real property used in the operation of the Business.

3.12.2. Except as set forth in Schedule 3.12, an Acquired Company has good and clear, record and marketable fee simple title in and to each of the Owned Real Properties, free and clear of all Encumbrances other than Permitted Encumbrances. Except as set forth in Schedule 3.12, there are no written or oral subleases, licenses, concessions, occupancy agreements or other Contracts granting to any Person (other than any Acquired Company) the right of use or occupancy of the Real Property and there is no Person (other than any Acquired Company) in possession of any portion of the Real Property.

3.12.3. An Acquired Company has a valid leasehold interest in and to each of the Leased Real Properties, free and clear of all Encumbrances other than Permitted Encumbrances. The Company has delivered to the Buyer accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect, together with extension notices and other material correspondence, lease summaries, notices or memoranda of lease, estoppel certificates and subordination, non-disturbance and attornment Contracts related thereto. With respect to each Real Property Lease that is a sublease, to the Company’s Knowledge, the representations and warranties in this Section 3.12.3 are correct with respect to the underlying lease.

3.12.4. The current use of the Real Property is, in all material respects, in accordance with the certificates of occupancy relating thereto and the terms of any Permits relating thereto. The Real Property and its current use, occupancy and operation by the Acquired Companies and the Facilities located thereon do not (a) constitute a nonconforming use or structure under, and are not in breach or violation of, or default under, any applicable building, zoning, subdivision or other land use or similar Legal Requirements, or (b) otherwise

violate or conflict with any covenants, conditions, restrictions or other Contracts, including the requirements of any applicable Encumbrances thereto.

3.12.5. To the Company's Knowledge, there is no pending or threatened appropriation, condemnation or similar Action affecting the Real Property. There has been no material destruction, damage or casualty with respect to the Real Property.

3.12.6. None of the Facilities currently existing on the Real Property encroaches upon any real property of, or easement held by, any other Person. No facility of any other Person encroaches on the Real Property. Each Facility on the Real Property is supplied with utilities and other services necessary for the operation of such Facility as the same is currently operated or currently proposed to be operated, all of which utilities and other services are provided via public roads or via permanent, irrevocable appurtenant easements benefiting the Real Property. Each parcel of Real Property abuts on, and has direct vehicular access to, a public road, or has access to a public road via a permanent, irrevocable appurtenant easement benefiting the parcel of Real Property, in each case, to the extent necessary for the conduct of the Business.

3.12.7. The Facilities, including all buildings, structures, equipment and improvements that are located on or constitute part of the Real Property, are in good operating condition and repair (subject to normal wear and tear), and are suitable, adequate and sufficient in all material respects for the purposes for which such Facilities are used. There are no defects in the roof, footings, foundation, sprinkler mains, structural, mechanical and HVAC systems and masonry walls in any of the improvements upon the Real Property other than (a) defects resulting from normal wear and tear, (b) defects that have not had and would not be reasonably likely to have an effect on the operation of the business operated on such parcel of Real Property, or (c) defects that would be reasonably expected to be repaired through the ordinary course maintenance or capital improvement program of the Acquired Companies prior to having such effect. All Permits necessary in connection with any construction upon, and present use and operation of, the Real Property and the lawful occupancy thereof have been issued by the appropriate Governmental Authorities.

### 3.13. Intellectual Property.

3.13.1. Company IP. Except as disclosed on Schedule 3.13.1, the Acquired Companies solely own, license, or otherwise have the valid and enforceable right to use all Company Technology and all Company Intellectual Property Rights, free and clear of any Encumbrances other than Permitted Encumbrances, and without any conflict with, or infringement of, the rights of any third parties. The Acquired Companies will continue to own, license or have the right to use such Company Intellectual Property Rights immediately following the Closing to the same extent as prior to the Closing. The Company Intellectual Property Rights and Company Technology include all of the Intellectual Property Rights and Technology used in or necessary for the conduct of the Business. Except for the Technology and Intellectual Property Rights licensed to the Acquired Companies under the Inbound IP Contracts identified on Schedule 3.13.4 and to the extent provided in such Inbound IP Contracts, none of the Company Technology or Company Intellectual Property Rights is in the possession, custody, or control of any third Person.

3.13.2. Infringement. Except as disclosed on Schedule 3.13.2, none of the Acquired Companies nor any Predecessor (a) has interfered with, infringed upon, diluted, misappropriated, or violated any Intellectual Property Rights of any Person, (b) has received any charge, complaint, claim, demand, or notice alleging interference, infringement, dilution, misappropriation, or violation of the Intellectual Property Rights of any Person (including any invitation to license or request or demand to refrain from using any Intellectual Property Rights of any Person), or (c) is party to any Contract imposing any Liability to defend or indemnify any Person for or against any interference, infringement, dilution, misappropriation or violation with respect to any Intellectual Property Rights. No Person has interfered with, infringed upon, diluted, misappropriated, or violated any Company Intellectual Property Rights, and no Acquired Company brought any claim or given notice to any Person alleging any of the foregoing.

3.13.3. Scheduled IP. Schedule 3.13.3 identifies all patents, patent applications, registered trademarks and copyrights, applications for trademark and copyright registrations, domain names, social media accounts and handles, registered design rights, material proprietary software systems developed by or on behalf of an Acquired Company, and other forms of registered Intellectual Property Rights and applications therefor, validly owned by, purported to be owned by, or exclusively licensed to an Acquired Company (collectively, the “Company Registrations”). Schedule 3.13.3 also identifies each trade name, each unregistered trademark, service mark, or trade dress, and each unregistered copyright owned or exclusively licensed by an Acquired Company that, in each case, is material to the Business.

3.13.4. IP Contracts. Schedule 3.13.4 identifies each Contract (a) under which an Acquired Company uses or licenses an item of Company Technology or Company Intellectual Property Rights that any Person besides an Acquired Company owns (the “Inbound IP Contracts”) other than Off-the-Shelf Software and (b) under which an Acquired Company has granted any Person any right or interest in Company Intellectual Property Rights including any right to use any item of Company Technology (the “Outbound IP Contracts” and together with the Inbound IP Contracts, the “IP Contracts”). For the purposes of the foregoing, “Off-the-Shelf Software” means software, other than open source software, obtained from a third party (i) on general commercial terms and that continues to be widely available on such commercial terms, (ii) that is not distributed with or incorporated in any product or services of any Acquired Company, (iii) that is used for business infrastructure or other internal purposes and (iv) that has been licensed for fixed payments of less than \$25,000 in the aggregate or annual payments of less than \$25,000 per year.

3.13.5. Confidentiality and Invention Assignments. The Acquired Companies have maintained commercially reasonable practices to protect the confidentiality of any confidential information or trade secrets disclosed to, owned or possessed by them and have required any employee or third party with access to an Acquired Company’s confidential information or trade secrets (which access has been limited to those with a legitimate need to know) to execute enforceable Contracts requiring them to maintain the confidentiality thereof and use it only for the benefit of the Acquired Companies. Copies of such Contracts have been made available to the Buyer. The Acquired Companies are not in breach of and have not breached any obligations or undertakings of confidentiality which they owe or have owed to any third party. All current and former employees and contractors who have developed or contributed to material Company Intellectual Property Rights have executed enforceable

Contracts that irrevocably assign to the Acquired Companies all of such Person's respective rights relating to such Intellectual Property Rights.

3.13.6. Privacy and Data Security. The Acquired Companies' Processing of any Sensitive Data is in compliance with all applicable privacy policies, terms of use, Legal Requirements, and Contracts applicable to any Acquired Company or to or by which any Acquired Company is bound. The Acquired Companies maintain policies and procedures regarding data security and privacy and maintain administrative, technical, and physical safeguards that are commercially reasonable and, in any event, in compliance with all applicable Legal Requirements and Contracts applicable to any Acquired Company or to or by which any Acquired Company is bound. To the Company's Knowledge, there has been no (a) Security Breaches, (b) unauthorized access or unauthorized use of any of the Company Technology, or (c) any unauthorized access or acquisition of any Personal Data or confidential business information used by the Acquired Companies or maintained by a third party service provider on behalf of the Acquired Companies; and no Person has given notice to any of the Acquired Companies of any such breach or violation. The Acquired Companies have not notified in writing, or been required by applicable Legal Requirements, Governmental Authorities or other Privacy Obligation to notify in writing, any Person of any Security Breach. The Acquired Companies have implemented and maintain an information security program that is comprised of reasonable and appropriate organizational, physical, administrative, and technical safeguards designed to protect the security, confidentiality, integrity and availability of the Company Technology and all Sensitive Data the Acquired Companies Process that are consistent with all Legal Requirements and Contracts applicable to the Acquired Companies.

3.13.7. Technology. The Acquired Companies (i) lawfully own, lease or license all Company Technology and such Company Technology is reasonably sufficient for the immediate and anticipated needs of the Acquired Companies, including as to capacity, scalability, and ability to process current and anticipated peak volumes in a timely manner, and (ii) will continue to have such rights immediately after the Closing. The Company Technology does not contain any viruses, bugs, vulnerabilities, faults or other disabling code that could (i) significantly disrupt or adversely affect the functionality or integrity of any Company Technology, or (ii) enable or assist any Person to access without authorization any Company Technology or to maliciously disable, maliciously encrypt, or erase any Software, hardware, or data. In the past two (2) years, there has been no failure or other substandard performance of or any security incident involving any Company Technology that has caused a material disruption in the operations of the business operated by the Acquired Companies. The Acquired Companies maintain commercially reasonable backup and data recovery, disaster recovery, and business continuity plans, procedures, and facilities and test such plans and procedures on a regular basis, and such plans and procedures have been proven effective in all material respects upon such testing. To the Company's Knowledge, the Company Technology does not and has not contained any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," malware or other Software routines or components intentionally designed to permit unauthorized access to, maliciously disable, maliciously encrypt or erase Software, hardware, or data. The Acquired Companies are not in breach of any of their Contracts relating to the Company Technology. The Acquired Companies have not been subjected to an audit of any kind in connection with any Contract pursuant to which they use any third-party Technology, nor received any notice of intent to conduct any such audit. No funds from any Governmental Entity were used in the development of any of the



Company Intellectual Property Rights, and none of the Company Intellectual Property Rights was first produced in the performance of any Government Contract. No Governmental Entity has been or is currently entitled to claim any rights (including license rights) in: (i) any “Technical Data” (as defined below) included in or related to any of such Company Intellectual Property Rights other than “Limited Rights” (as defined below), (ii) any “Computer Software” (as defined below) included in such Company Intellectual Property Rights other than “Restricted Rights” (as defined below), (iii) any patents or patentable invention included in such Company Intellectual Property Rights or (iv) any copyright included in such Company Intellectual Property Rights. No Acquired Company has provided any Governmental Entity with any Technical Data, Computer Software or Software in the performance of any Government Contract. The terms “Technical Data”, “Restricted Rights”, “Computer Software”, “Limited Rights” and “Restricted Rights” have the meanings set forth in 48 C.F.R. Section 52.227-7013 and 48 C.F.R. Section 252.227-7014, as applicable.

3.14. Legal Compliance; Illegal Payments; Permits.

3.14.1. No Acquired Company is in breach or violation of, or default under, and has not at any time during the previous five years been in breach or violation of, or default under: (a) its organizational documents nor, to the Company’s Knowledge, is there a basis which could constitute such a breach, violation or default; or (b) any Legal Requirement nor, to Company’s Knowledge, is there a basis which could constitute such a breach, violation or default, except for breaches, violations or defaults disclosed on Schedule 3.14.1. During the previous five years, no written notices have been received by, and no Actions have been asserted against, any Acquired Company alleging a violation of any Legal Requirement, and no Acquired Company has been subject to any adverse inspection, finding, investigation, penalty assessment, audit or other compliance or enforcement action. In the conduct of the Business, no Acquired Company nor any of its directors, managers, contractors, officers, employees or agents, has (i) directly or indirectly, given, or agreed to give, any illegal gift, contribution, payment or similar benefit to any supplier, customer, governmental official or employee or other Person who was, is or may be in a position to help or hinder an Acquired Company (or assist in connection with any actual or proposed transaction) or made, or agreed to make, any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local or foreign public office or (ii) established or maintained any unrecorded fund or asset or made any false entries on any books or records for any purpose.

3.14.2. Each Acquired Company has been duly granted and holds all Permits under all Legal Requirements necessary for the conduct of the Business and the lawful occupancy, use and operation of the Real Property. Schedule 3.14.2 describes each such Permit affecting, or relating to, the Assets or the Business together with the Governmental Authority or other Person responsible for issuing such Permit. Except for any Permits marked with an asterisk (\*) on Schedule 3.14.2, (a) such Permits are valid and in full force and effect, (b) no Acquired Company is in breach or violation of, or default under, any such Permit, and, to the Company’s Knowledge, no basis exists which, with notice or lapse of time or both, would constitute any such breach, violation nor default and (c) such Permits will continue to be valid and in full force and effect, on identical terms following the consummation of the Contemplated Transactions.

3.15. Tax Matters.

3.15.1. Except as set forth on Schedule 3.15.1, each Acquired Company has timely filed, or has caused to be timely filed on its behalf, all Tax Returns required to be filed by it in accordance with all Legal Requirements. Except as set forth on Schedule 3.15.1, no Acquired Company has asked for any extension of time in order to file any Tax Return. All such Tax Returns were true, correct and complete in all material respects. All Taxes owed by each Acquired Company (whether or not shown on any Tax Return) have been timely paid in full. Except as set forth on Schedule 3.15.1, no Action has ever been asserted by an authority in a jurisdiction where an Acquired Company does not file Tax Returns that such Acquired Company is or may be subject to taxation by or be required to file Tax Returns in that jurisdiction, and, to the Company's Knowledge, there is no basis for any such Action to be asserted. There are no Encumbrances with respect to Taxes upon any Asset other than liens for current Taxes not yet due and payable.

3.15.2. Each Acquired Company has deducted, withheld and timely paid to the appropriate Governmental Authority all Taxes required to be deducted, withheld or paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, equity holder, member or other third party, and each Acquired Company has complied with all reporting and recordkeeping requirements.

3.15.3. The unpaid Taxes of the Acquired Companies (i) did not, as of the Most Recent Balance Sheet Date, exceed the reserve for Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) and (ii) will not, as of the Closing Date, exceed the amount of Taxes reflected in Debt.

3.15.4. To the Company's Knowledge, there is no Action concerning any Tax Liability of any Acquired Company pending or otherwise asserted by a Governmental Authority. The Company has provided or made available to the Buyer true, correct and complete copies of all Tax Returns, examination reports, and statements of deficiencies filed, assessed against, or agreed to by any Acquired Company since December 31, 2014.

3.15.5. No Acquired Company has waived any statute of limitations in respect of Taxes or Tax items. No Acquired Company has agreed to or is a beneficiary of any extension of time with respect to any Tax deficiency, any Tax that may be assessed or collected, or any adjustment to any Tax Return that may be made. No Acquired Company has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar Contracts or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of any Acquired Company.

3.15.6. No Acquired Company has made any payments, or has been or is a party to any Contract, arrangement or plan that could result in it making payments, that have resulted or would result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Code Section 280G or in the imposition of an excise Tax under Code Section 4999 (or any corresponding provisions of state, local or foreign Tax law)

or that were not or would not be deductible under Code Sections 162 or 404 or that were or will be required to be included in gross income under Code Section 409A(a)(1)(A).

3.15.7. No Acquired Company has been a “distributing corporation” or a “controlled corporation” within the meaning of Code Section 355(a)(1)(A).

3.15.8. No Acquired Company has ever been a member of an “affiliated group” within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return (other than the “affiliated group” the common parent of which is the Company). No Acquired Company is a party to any Contract relating to Tax sharing or Tax allocation. No Acquired Company has any Liability for the Taxes of any Person (other than an Acquired Company) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Legal Requirements), as a transferee or successor, by Contract or otherwise.

3.15.9. No Acquired Company is or has been required to make any adjustment pursuant to Code Section 481(a) (or any predecessor provision) or any similar provision (including of state, local or foreign Tax Legal Requirements) by reason of any change in any accounting methods, or will be required to make such an adjustment as a result of the Contemplated Transactions or to include any item in taxable income post-Closing (or exclude any item of deduction or loss post-Closing) as a result of such section, any similar provision, or any change in accounting methods for Tax purposes, and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes. No Governmental Authority has proposed any such adjustment or change in accounting method.

3.15.10. No Acquired Company will be required to include any amount in taxable income or exclude any item of deduction or loss from taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (a) any “closing agreement” as described in Code Section 7121 (or any corresponding or similar provision of state, local or foreign income Tax Legal Requirements) executed on or prior to the Closing Date, (b) any deferred intercompany gain or excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision or administrative rule of federal, state, local or foreign income Tax Legal Requirements), (c) installment sale or open transaction disposition made on or prior to the Closing Date, (d) any prepaid amount received on or prior to the Closing Date, (e) election under Code Section 965(h) (or any similar election under state or local law) or (f) any change in Legal Requirements.

3.15.11. No Acquired Company owns any property of a character, the indirect transfer of which, pursuant to this Agreement, would give rise to any documentary, stamp, or other transfer Tax.

3.15.12. Neither the Sellers nor the Acquired Companies have participated in or are currently participating in any “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4 or any “tax shelter” within the meaning of Code Section 6662.

3.15.13. The Company is not a “United States Real Property Holding Corporation” within the meaning of Section 897(c)(2) of the Code.



3.15.14. Since December 31, 2019, no Acquired Company has made, changed or revoked any Tax election, elected or changed any method of accounting for Tax purposes, amended any Tax Return, waived or extended any statute of limitations in respect of Taxes, surrendered any right to claim a refund of Taxes, settled or compromised (or entered a closing agreement with respect to) any Action in respect of Taxes, entered into any Contract in respect of Taxes with any Governmental Authority, or taken any action that could increase the Taxes of any Acquired Company for any period ending after the Closing Date or decrease any Tax attribute of any Acquired Company existing on the Closing Date.

3.15.15. There is no unclaimed property or escheat liability owed to a Governmental Authority with respect to the property or other assets held or owned by any of the Acquired Companies.

3.15.16. The Company has been a validly electing S corporation within the meaning of Code Sections 1361 and 1362 since July 1, 2001. Prior to July 1, 2001, the Company was a C Corporation. The Company has no potential liability for Taxes under Code Section 1374 or Section 1375 or any similar provisions of foreign, state or local law.

3.15.17. The Company has not made any election to defer any payroll Taxes under the CARES Act.

3.15.18. Schedule 3.15.17 sets forth the U.S. federal income Tax classification of each of the Acquired Companies since their respective dates of formation.

### 3.16. Employee Benefit Plans.

3.16.1. For purposes of this Agreement, “Employee Plan” means any plan, program, arrangement, Contract or policy, whether or not reduced to writing, whether or not subject to ERISA, and whether covering a single individual or a group of individuals, that is (a) a “welfare plan” within the meaning of Section 3(1) of ERISA, (b) a “pension plan” within the meaning of Section 3(2) of ERISA, (c) a profits interest, stock bonus, stock purchase, stock option, restricted stock, phantom stock, stock appreciation right or similar equity or equity-based plan, program, arrangement, Contract or policy or (d) any other employment (including offer letters), consulting, independent contractor, salary continuation, termination, severance, deferred compensation, retirement, pension, welfare-benefit, post-retirement health or welfare benefit, bonus, commission or other cash incentive compensation, profit-sharing, savings, retention, change-of-control, fringe-benefit, cafeteria, vacation or other paid time-off, disability, death benefit, hospitalization, medical, life insurance or other similar plan, program, arrangement, Contract or policy.

3.16.2. Schedule 3.16.2 sets forth a true, complete and correct list of all Employee Plans that an Acquired Company sponsors, maintains, contributes to or is obligated to contribute to for the benefit of any current or former employee, officer, director, independent contractor, or other service provider of an Acquired Company or the beneficiaries or dependents of any such Person, or with respect to which an Acquired Company has any Liability (each a “Company Plan”). With respect to each Company Plan, the Company has delivered to the Buyer true, accurate and complete copies of each of the following, as applicable: (a) if the plan has been reduced to writing, the plan document together with all

amendments thereto, (b) if the plan has not been reduced to writing, a written summary of all material plan terms, (c) copies of any trust agreements, custodial agreements, insurance policies, administrative agreements and similar Contracts, and investment management or investment advisory Contracts, (d) copies of any summary plan descriptions (including any summary of material modifications), employee handbooks or similar employee communications, (e) in the case of any plan that is intended to be qualified under Code Section 401(a), a copy of the most recent determination or opinion letter from the IRS and any related correspondence (f) a copy of the most recently filed Forms 5500, including all schedules and attachments, and (g) all non-routine correspondence (including any applications or submissions under any voluntary correction programs) with any Governmental Authority relating to such plan within the preceding six (6) years.

3.16.3. Except as set forth on Schedule 3.16.3, none of the Acquired Companies or any Person that is or would in the past six (6) years have been an ERISA Affiliate of an Acquired Company maintains, contributes to, is required to contribute to, or has any Liability, or has at any time in the past six (6) maintained, contributed to or been required to contribute to, or has had any Liability with respect to, any (i) plan that is subject to Title IV of ERISA, Section 302 of ERISA or Code Section 412, including, without limitation, any “multiemployer plan” as defined in Section 3(37) of ERISA, (ii) any “multiple employer welfare arrangement,” as defined in Section 3(40) of ERISA or (iii) any “multiple employer plan,” as described in Code Section 413(c).

3.16.4. Each Company Plan that is intended to be qualified under Code Section 401(a) is covered by a favorable IRS determination or opinion letter to the effect that the form of the plan is so tax qualified upon which it can rely, and no fact or event has occurred since the date of such determination or opinion letter that could reasonably be expected to adversely affect such qualification or otherwise result in material Liability to any Acquired Company. Each Company Plan, including any associated trust or fund, has been established, maintained, operated, funded, and administered in all material respects in accordance with its terms, and in compliance with applicable Legal Requirements. No Acquired Company nor fiduciary, trustee or administrator of any Company Plan, has engaged in any non-exempt Prohibited Transaction with respect to any Company Plan that could subject any such Company Plan, or any Acquired Company, to any Liability. Each Company Plan that is a tax-qualified defined contribution plan, other than the ESOP, is an “ERISA Section 404(c) Plan” within the meaning of the applicable Department of Labor regulations.

3.16.5. All required contributions to, and premium payments on account of, each Company Plan have been made on a timely basis or, to the extent not yet due, have been properly accrued in accordance with the Accounting Principles.

3.16.6. There is no pending or, to the Company’s Knowledge, threatened Action relating to a Company Plan, other than routine claims in the Ordinary Course of Business for benefits provided for by the Company Plans. Except as set forth on Schedule 3.16.6, no Company Plan is or, within the last six (6) years, has been the subject of an Action, examination or audit by a Governmental Authority, is the subject of an application or filing under, or is a participant in, a government-sponsored amnesty, voluntary compliance, self-correction or similar program. Specifically, but not in limitation of the forgoing, there is no Action (i) pending or threatened against or affecting the Acquired Companies by the ESOP or

any Governmental Authority or (ii) pending or, threatened against or affecting the ESOP, the ESOP Trustee or the Acquired Companies with respect to the ESOP by any of its participants, any Governmental Authority or any other Person. To the Company's Knowledge, neither the ESOP nor any of the ESOP participants has any basis for any claim against the Acquired Companies or the ESOP Trustee (or any other fiduciary).

3.16.7. Except as required under Section 601 *et seq.* of ERISA at the sole expense of the applicable participant, no Company Plan provides for, and no Acquired Company has or could have any Liability with respect to, benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment.

3.16.8. Each Company Plan that constitutes in any part a "nonqualified deferred compensation plan" (as defined in Code Section 409A(d)(1) and applicable regulations) is and has at all times been in compliance in form and operation with the applicable requirements of Code Section 409A and the regulations and guidance promulgated thereunder.

3.16.9. Except as contemplated by this Agreement with respect to the ESOP, neither the execution and delivery of this Agreement nor the consummation of the Contemplated Transactions will (either alone or in connection with any other event) (a) result in any payment (whether of Compensation, termination or severance pay or otherwise) becoming due to any current or former employee, officer, director, independent contractor, or other service provider of any Seller or any Acquired Company, (b) cause or result in the acceleration of vesting or payment of, or increase the amount of, any Compensation or benefit payable under, or the required funding of, any Company Plan, or (c) limit or restrict the ability of the Acquired Companies, Buyer or any of their respective Affiliates to merge, amend or terminate any of the Company Plans or any related Contract, or (d) result in the forgiveness of any Debt of any current or former officer, director, employee, independent contractor, or other service provider.

### 3.17. ESOP.

3.17.1. The ESOP constitutes an "employee stock ownership plan" within the meaning of Code Section 4975(e)(7) and Section 407(d)(6) of ERISA. The Company Shares held by the ESOP Trust constitute "employer securities" as defined in Code Section 409(l) and "qualifying employer securities" as defined in Section 407(d)(5) of ERISA. The ESOP Trust is a trust duly created and is validly existing under applicable Legal Requirements. The ESOP Trustee has been duly appointed as the trustee of the ESOP Trust.

3.17.2. The Company has previously made available to the Buyer, as of the December 31, 2020 allocation date under the ESOP: (i) a list of all participants in the ESOP with an account balance (whether or not currently employed); (ii) the vesting percentage applicable to each such account balance; (iii) the number of outstanding shares of Company Shares allocated to each such participant; (iv) the contributions, by date and amount, made by the Company to the ESOP; and (v) for each purchase of outstanding Company Shares by the ESOP, the date of purchase, the seller(s), the number of shares purchased, any financing arrangements and the consideration paid therefor.

3.17.3. The execution, delivery and performance by the ESOP Trustee of this Agreement and each ancillary agreement to which the ESOP Trustee is or will be a party and the consummation by the ESOP Trustee and ESOP Trust of the Contemplated Transactions are within the ESOP Trustee's powers and authority and have been duly and validly authorized and approved by all necessary action on the part of the ESOP Trustee and the ESOP Trust, and, subject to satisfaction of the closing conditions set forth in Article 7, no other actions or proceedings on the part of the ESOP Trustee or ESOP Trust are necessary in order to authorize the execution, delivery and performance by the ESOP Trustee or ESOP Trust of this Agreement and each ancillary agreement to which the ESOP Trustee or ESOP Trust is or will become a party.

3.17.4. Except for the ESOP Loan, the ESOP Trust has no outstanding indebtedness to the Acquired Companies or any other Person.

3.17.5. None of the execution, delivery or performance by the ESOP Trustee and ESOP Trust of this Agreement and any Ancillary Agreement to which it is a party and the consummation of the Contemplated Transactions has resulted in or is reasonably expected to result in (a) a Prohibited Transaction or (b) a disposition in violation of Code Section 4978. No ESOP fiduciary has or is reasonably expected to have any Liability for breach of fiduciary duty in connection with the execution, delivery or performance of this Agreement, the sale of the ESOP Shares or the other Contemplated Transactions.

3.17.6. Schedule 3.17.6 sets forth all service agreements and documents that provide for indemnification of the ESOP Trustee, the ESOP Trustee's Independent Financial Advisor or any fiduciary of the ESOP or such fiduciary's financial advisors in connection with the consummation of the sale of the ESOP Shares and other Contemplated Transactions or in connection with any prior transactions involving the ESOP.

3.17.7. With respect to the ESOP, (a) there is no requirement other than required by the ESOP or applicable Legal Requirement that ESOP participants consider, vote upon or otherwise instruct the ESOP Trustee on the sale of the ESOP Shares or the Contemplated Transactions; (b) the fiduciaries of the ESOP have properly discharged their fiduciary duties with respect to all material aspects of the establishment and operation of the ESOP, including valuing the ESOP Shares, voting the ESOP Shares, and making participant distributions; and (c) through and including the Closing Date, all activities carried on by the ESOP in respect of "employer securities" (as defined in Code Section 409(l)), including any repurchases by the Company of "employer securities" (as defined in Code Section 409(l)) from distributees of the ESOP, have been conducted on the basis of valuations upon which the Company could reasonably rely, prepared by an independent appraiser meeting the requirements of Code Section 401(a)(28)(C).

3.17.8. The ESOP has at all times complied with the voting requirements of Code Section 409(e) and the valuation requirements of Section 408(e) of ERISA. Except as provided in the ESOP Amendment, the execution, delivery and performance by the ESOP Trust of this Agreement and each Ancillary Agreement to which the ESOP Trust is a party, and the consummation of the sale of the ESOP Shares and the other Contemplated Transactions, do not and will not contravene, conflict with, violate, result in a breach of the terms conditions or provisions of, constitute a default (or an event that with or without notice

or lapse of time or both would become a default) under, or give rise to any rights of acceleration, amendment, termination or cancellation or to a loss of any rights under, the Plan, the trust agreement governing the ESOP Trust or any other Contract to which the ESOP Trust is a party or by which the ESOP Trust or any of its assets or properties is bound, including any loan agreement or any provision of the Seller's organizational documents.

3.17.9. As of the date of the execution of this Agreement, the ESOP Trustee has received a preliminary opinion of the ESOP Trustee's Independent Financial Advisor dated as of the date of this Agreement (the "Preliminary ESOP Fairness Opinion") that, subject to receipt of the ESOP Fairness Opinion at Closing, (a) the purchase price to be received by the ESOP Trust for the ESOP Shares held by the ESOP Trust and sold by the ESOP Trust pursuant to this Agreement is not less than the fair market value (as such term is used in determining "adequate consideration" under Section 3(18) of ERISA) of such ESOP Shares as of the Closing Date, and (b) the terms of the Contemplated Transactions, taken as a whole, are fair and reasonable to the ESOP Trust from a financial point of view.

3.17.10. The ESOP has at all times complied with the requirements of Code Section 409(p).

3.17.11. The ESOP has at all times been a permissible shareholder of the Company under applicable Legal Requirements.

3.18. Environmental Matters.

3.18.1. Except as set forth in Schedule 3.18:

(a) the Acquired Companies are, and at all times since January 1, 2017 have been, in material compliance with all Environmental Laws, which such compliance includes possessing and materially complying with all material Permits required by Environmental Laws, and no Action is pending or, to the Company's Knowledge, threatened, the effect of which would be to terminate, suspend, not renew or materially modify any such Permit;

(b) except for matters that have been resolved, no Acquired Company has received any notice or request for information regarding any Action or claim involving an Acquired Company or the Real Property that relates to any actual or alleged violation of, Liability under, or investigatory, remedial or corrective obligations pursuant to, Environmental Law, and to the Company's Knowledge no such Actions or claims are threatened against any Acquired Company;

(c) no Acquired Company has any ongoing obligations pursuant to any Government Order or agreement resolving or settling any alleged violation of or Liability under Environmental Law;

(d) no material capital expenditures are required to be incurred within the next two (2) years following the date of this Agreement in order to achieve or maintain the compliance of the Acquired Companies with Environmental Law or any Permits issued pursuant to Environmental Law;

(e) there has been no release by any Acquired Company or any Predecessor, or to Company's Knowledge, by any other Person, of any Hazardous Substance at, on, upon, into or from the Real Property or any other property currently or formerly owned, leased or otherwise used by any Acquired Company or any Predecessor, which such release was in violation of Environmental Law or occurred in a manner or to a degree that requires reporting, investigation, remediation or other response pursuant to Environmental Law or that otherwise reasonably could be expected to give rise to Liability for any Acquired Company; and

(f) no Acquired Company is party to any agreement obligating it to indemnify a third party against any Liability arising under Environmental Law, which such Liability would not otherwise be a Liability of such Acquired Company.

3.18.2. The Company has made available to Buyer true, accurate and complete copies of all material assessments, reports, studies, correspondence and other documents relating to the environmental condition of the Real Property or any other property currently or formerly operated by any Acquired Company or any Predecessor, or to the compliance of the Acquired Companies with Environmental Law, in each case that are in the Acquired Companies' possession or reasonable control.

### 3.19. Contracts.

3.19.1. Contracts. Except as disclosed on Schedule 3.19.1, no Acquired Company is bound by or a party to:

(a) any Contract (or group of related Contracts) for the purchase or sale of inventory, raw materials, commodities, supplies, goods, products, equipment or other personal property, or for the furnishing or receipt of services, in each case, the performance of which will extend over a period of more than one year or which provides for aggregate payments to or by an Acquired Company in excess of \$200,000;

(b) (i) any capital lease or (ii) any other lease or other Contract relating to equipment providing for aggregate rental payments in excess of \$100,000, under which any equipment is held or used by an Acquired Company;

(c) any Contract, other than Real Property Leases or leases relating to equipment, relating to the lease or license of any Asset, including Technology and Intellectual Property Rights (including all customer license and maintenance Contracts, all Contracts relating to the joint ownership of Intellectual Property Rights and all Contracts relating to the escrow of any Intellectual Property Rights) that is not included on Schedule 3.13.4;

(d) any Contract relating to the acquisition or disposition of (i) any business of an Acquired Company or any other Person (whether by merger, consolidation or other business combination, sale of Capital Stock or other securities, sale of assets or otherwise) or (ii) any asset other than in the Ordinary Course of Business;

(e) any Contract under which an Acquired Company incurs any Liability to pay any amount in respect of indemnification obligations, purchase price adjustment, earnout or otherwise in connection with any (i) acquisition or disposition of any business, assets or securities (other than the sale of inventory in the Ordinary Course of Business), (ii)





merger, consolidation or other business combination or (iii) series or group of related transactions or events of the type specified in clauses (i) and (ii) above;

(f) any Contract concerning a partnership, limited liability company or joint venture;

(g) any Contract that grants, or agrees to grant, any customer or other Person a right to “most favored nation” pricing terms;

(h) any Contract (or group of related Contracts) (i) under which an Acquired Company has created, incurred, assumed or guaranteed any Debt, (ii) under which an Encumbrance has been placed on any Asset or (iii) under which any other Person has guaranteed any Debt of an Acquired Company;

(i) any Contract relating to confidentiality or non-competition restrictions or that otherwise restricts the conduct of the Business by any Acquired Company or limits the freedom of any Acquired Company to sell any product or provide any service, to engage in any line of business or to compete with any Person in any geographic area or to hire, solicit or retain any Person (whether an Acquired Company is subject to or the beneficiary of such obligation);

(j) any Contract under which an Acquired Company incurs any Liability with respect to any severance pay or other Compensation obligations which would become payable, directly or indirectly, by reason of this Agreement or the Contemplated Transactions;

(k) any Contract under which an Acquired Company incurs any Liability to any investment bank, broker, financial advisor, finder or other similar Person (including an obligation to pay any legal, accounting, brokerage, finder’s, or similar fees or expenses in connection with this Agreement or the Contemplated Transactions);

(l) any Contract providing for the employment or engagement of any Person on a full-time, part-time, consulting, temporary, independent contractor or other basis or otherwise providing Compensation or other benefits, including severance or change of control benefits, to any officer, director, employee, or individual independent contractor, other than Contracts terminable by an Acquired Company for any reason upon less than thirty (30) days’ notice without incurring any Liability;

(m) any collective bargaining agreement or other Contract with any Union;

(n) any agency, dealer, distributor, sales representative, marketing or other similar Contract;

(o) any Contract under which an Acquired Company has advanced or loaned an amount to any Person (other than to any of its employees in the Ordinary Course of Business);

(p) any Government Contract or outstanding Government Bid or any Contract or arrangement under which any Acquired Company has a “small business” or similar designation;



- (q) any Contract containing any express warranty obligations;
- (r) any Contract pursuant to which any Acquired Company has any Liability to defend, insure (or obtain insurance for the benefit of) or indemnify any other Person; and
- (s) any other executory Contract (or group of related executory Contracts) the performance of which involves consideration in excess of \$200,000 over the life of such Contract.

3.19.2. Enforceability; Breach. Each Contract required to be disclosed on Schedule 3.9 (Debt), Schedule 3.12 (Real Property), Schedule 3.13.4 (IP Contracts), Schedule 3.16.2 (Employee Benefit Plans), Schedule 3.19.1 (Contracts) or Schedule 3.25 (Insurance) or with a customer or supplier required to be disclosed on Schedule 3.21 (Customers and Suppliers) (each of the foregoing Contracts, a “Disclosed Contract”) is enforceable (subject to the Enforceability Exceptions) against each party to such Contract in accordance with its term, and is in full force and effect, and, subject to obtaining any necessary consents disclosed on Schedule 3.4 (Noncontravention), will continue to be so enforceable and in full force and effect on identical terms following the consummation of the Contemplated Transactions. No Acquired Company or any other party to any Disclosed Contract has been or is currently in breach or violation of, or default under, or has repudiated any provision of, any Disclosed Contract nor has any event occurred that with the lapse of time, or the giving of notice, or both, would reasonably be expected to constitute a default under any Disclosed Contract, and no notice with respect to any of the foregoing has been sent or received by any Acquired Company. The Company has delivered to the Buyer true, accurate and complete copies of each written Disclosed Contract, in each case, as amended or otherwise modified and in effect. The Company has delivered to the Buyer a written summary setting forth the terms and conditions of each oral Disclosed Contract.

3.20. Affiliate Transactions. Except as disclosed on Schedule 3.20, no Seller and no officer, director, manager, trustee, employee, shareholder, equity holder, partner, member or Affiliate of any Seller or any Acquired Company, or, to the Company’s Knowledge, any individual related by blood, marriage or adoption to any of the foregoing individuals or any entity in which any of the foregoing Persons owns any beneficial interest in, is a consultant, competitor, creditor, debtor, customer, distributor, service provider, supplier or vendor of, or is a party to any Contract with, an Acquired Company or has any interest in any of the Assets used in, or necessary to, the Business. Schedule 3.20 contains a description of all services provided to or on behalf of any Acquired Company by any Seller or its Affiliates (other than the Acquired Companies) and the payments and other costs associated therewith. Any Contracts disclosed on Schedule 3.20 is on commercially reasonable terms not any less favorable to an Acquired Company than if such contract was entered into with any third party acting at arm’s length.

3.21. Customers and Suppliers. Schedule 3.21 sets forth a list of the Acquired Companies’ top 25 customers and top 25 suppliers for each of the fiscal years ended December 31, 2020, 2019 and 2018. Except as described on Schedule 3.21, no Acquired Company has received any indication, whether written or oral, and Company has no Knowledge, that (a) any customer or supplier has stopped or materially decreased, or plans to stop or materially decrease, the amount of business done with any Acquired Company, (b) any customer has requested or received a decrease, or that

there is any intention or plan to provide a decrease, in the prices paid to any Acquired Company that is or would be inconsistent with the terms of its existing Contract or order with any Acquired Company or (c) any supplier has requested or received an increase, or that there is any intention or plan to provide an increase, in the prices charged to any Acquired Company that is or would be inconsistent with the terms of its existing supply Contract with any Acquired Company. In addition, except as described on Schedule 3.21, no Acquired Company has received any indication, and the Company has no Knowledge, that customers which in the aggregate account for more than 10% of the Acquired Companies' consolidated annual revenues (a) plan or have threatened to stop or materially decrease the amount of business conducted with the Acquired Companies or (b) have requested or received any decreases, or that there is any intention or plan to provide any decreases, in the prices paid to any of the Acquired Companies that are or would be inconsistent with the terms of existing Contracts with the Acquired Companies. In addition, except as described on Schedule 3.21, no Acquired Company has received any indication, and the Company has no Knowledge, that suppliers which in the aggregate account for more than 10% of the dollar amount of consolidated annual payments made by the Acquired Companies (a) plan or have threatened to stop or materially decrease the amount of business conducted with, or materially increase the prices charged to, the Acquired Companies or (b) have requested or received any increases, or that there is any intention or plan to provide any increases, in the prices charged to any of the Acquired Companies that are or would be inconsistent with the terms of existing supply Contracts with the Acquired Companies. In addition, except as described on Schedule 3.21, no Acquired Company is involved in any material Action, claim or dispute with any customer or supplier of an Acquired Company.

### 3.22. Employees.

3.22.1. Except as disclosed on Schedule 3.22, there are no labor troubles (including any arbitration, grievance, work slowdown, lockout, stoppage, picketing or strike) pending, or to the Company's Knowledge, threatened between an Acquired Company, on the one hand, and any employee, on the other hand, and there have been no such troubles in the past three (3) years. Except as disclosed on Schedule 3.22, (a) no employee of an Acquired Company is represented by a Union, (b) no Acquired Company is a party to, or otherwise subject to, any collective bargaining agreement or other Contract with a Union, (c) no petition has been filed or proceedings instituted by or on behalf of an employee or group of employees of an Acquired Company with any Governmental Authority seeking recognition of a bargaining representative and there are no pending or threatened unfair labor practice charges or complaints before the National Labor Relations Board or any analogous state or foreign Governmental Authority, (d) no Acquired Company has, or is currently, engaged in any unfair labor practice, (e) there is no organizational effort currently being made or threatened by, or on behalf of, any Union to organize employees of any Acquired Company and there has been no such effort in the past three (3) years, (f) no demand for recognition of employees of any Acquired Company has been made by, or on behalf of, any Union and (g) no notice, consultation or consent obligations with respect to any employees of any Acquired Company or any Union will be triggered by the execution of this Agreement or the consummation of the Contemplated Transactions.

3.22.2. True and complete information as to the name, current job title, Union representation (if applicable) and compensation for all current directors, officers, and employees of the Acquired Companies has been provided to Buyer. To the Company's Knowledge, no current executive, Key Employee or group of employees has given notice of

termination of employment or otherwise disclosed plans to terminate employment with any Acquired Company within the twelve (12) month period following the date hereof. No Acquired Company has, in the past three (3) years, taken any action with respect to the current or former employees of any Acquired Company that would constitute a “Plant Closing” or “Mass Layoff” within the meaning of the Worker Adjustment Retraining and Notification Act or any analogous Legal Requirement. In the past three (3) years, to the Company’s Knowledge, no director, officer or managerial or supervisory employees of any Acquired Company has been the subject of any allegation of sex-based discrimination, sexual harassment or sexual misconduct, or breach of any Acquired Company policy relating to the foregoing. No executive or Key Employee of the Acquired Companies is employed under a non-immigrant work visa or other work authorization that is limited in duration.

3.22.3. The Acquired Companies are, and for the past three (3) years have been, in material compliance with all applicable Legal Requirements respecting employment and employment practices and terms and conditions of employment, including any provision relating to wages (including minimum wage and overtime), hours of work, child labor, withholdings and deductions, classification and payment of employees, independent contractors, and consultants, employment equity, nondiscrimination, non-harassment and non-retaliation in employment, occupational health and safety, worker’s compensation, employment eligibility and immigration. The Acquired Companies (and the relevant plan administrator if other than the Acquired Companies) have at all relevant times properly classified each provider of services to the Acquired Companies as an employee or independent contractor, as the case may be, for all purposes for which such classification could be relevant. The Acquired Companies have not incurred, and no circumstances exist under which any Acquired Company would reasonably be expected to incur, any Liability arising from the misclassification of employees as independent contractors, from the misclassification of independent contractors as employees, and/or from the misclassification of employees as exempt from the overtime pay requirements of the Fair Labor Standards Act or analogous state laws, and/or from the failure to pay wages (including overtime wages).

3.22.4. There is not, and for the past three (3) years there has not been, any material Action pending (or, to the Company’s Knowledge, threatened) by or before any Governmental Authority with respect to any Acquired Company (a) concerning employment-related matters or (b) brought by any current or former applicant, employee or independent contractor of any Acquired Company.

3.22.5. With respect to each payment made by an Acquired Company to any employee, such Acquired Company has made all deductions, withholding and filings through its payroll systems as required (a) by the terms of any Company Plan and (b) under all applicable Legal Requirements on a timely, current and accurate basis.

3.22.6. During the past two (2) years, no employee, service provider or other Person, in each case, who was a key inventor or contributor to material Company Intellectual Property Rights owned or purported to be owned by any Acquired Companies has ceased to be employed by or provide services to any Acquired Company.

3.23. Litigation; Government Orders. Except as set forth on Schedule 3.23, during the past five years there have been no, and there are not now any, Actions (a) pending, or, to the

Company's Knowledge, threatened against or affecting, or pending or threatened by, any Acquired Company, or (b) pending, or, to the Company's Knowledge, threatened against or affecting, any Acquired Company's officers, directors, managers, employees, consultants, independent contractors or agents with respect to their business activities, and to the Company's Knowledge there are no facts making the commencement of any Action described in the foregoing clauses (a) or (b) reasonably likely. None of the Acquired Companies (i) is the subject of any Government Order or (ii) has threatened or plans to initiate any Action. The Acquired Companies are fully insured with respect to each of the matters set forth on Schedule 3.23.

3.24. Product Warranties; Product Liability.

3.24.1. Product Warranties. Except as set forth on Schedule 3.24.1, no Acquired Company provides or has provided any guarantees, warranties or indemnities with respect to the performance or integrity of any of the products designed, tested, sold, manufactured, distributed or delivered by, or services provided by, the Acquired Companies. Except as set forth on Schedule 3.24.1, the suppliers of products to the Acquired Companies provide warranties with respect to such products and permit the Acquired Companies to "pass through" such warranties to their customers upon the sale, distribution or delivery of such products by the Acquired Companies and no Acquired Company has taken any action (or failed to take any action) that could reasonably be expected to negate the availability to their respective customers of any "pass through" warranties from the applicable suppliers. Except as set forth on Schedule 3.24.1 (and except for other Liabilities for which there is a reserve reflected in the Financials), there are no claims or other Actions outstanding, pending or, to the Company's Knowledge, threatened, and during the previous three (3) years no claims or other Actions have been submitted or asserted, relating to breach of any guarantee, warranty or indemnity relating to any products designed, sold, manufactured, distributed or delivered by, or services provided by, the Acquired Companies, and, to the Company's Knowledge, there is no reasonable basis for any present or future claim or other Action that would reasonably be expected to give rise to any such Liability. To the Company's Knowledge there is no material design defect, nor any failure to warn, with respect to any products now or previously designed, tested, sold, manufactured, distributed or delivered by, or services now or previously provided by, any Acquired Company.

3.24.2. Product Liability. Except as set forth on Schedule 3.24.2 (and except for other Liabilities for which there is a reserve reflected in the Financials), there are no claims or other Actions pending, or, to the Company's Knowledge, threatened, and during the previous three (3) years no claims or other Actions have been submitted or asserted, alleging that any Acquired Company has any Liability (whether in negligence, breach of warranty, strict liability, failure to warn, or otherwise) arising out of or relating to any claimed injury or damage to individuals or property as a result of the claimed ownership, possession or use of any products allegedly designed, tested, sold, manufactured, distributed or delivered by any Acquired Company, and, to the Company's Knowledge, there is no reasonable basis for any present or future claim or other Action that would reasonably be expected to give rise to any such Liability.

3.25. Insurance. Schedule 3.25 sets forth a true and complete list of all insurance policies in force with respect to the Acquired Companies. The list includes for each insurance policy the type of insurance policy, form of coverage, policy number, name of insurer, period (term), limits,

deductibles and premiums. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing have or will have been paid, no Acquired Company is in default thereunder, and no notice of cancellation, termination or nonrenewal has been received by any Acquired Company with respect to any such insurance policy. Schedule 3.25 also describes any self-insurance or co-insurance arrangements by or affecting any Acquired Company, including any reserves established thereunder. In addition, Schedule 3.25 contains a list of all pending claims and all claims submitted during the previous three (3) years under any insurance policy maintained by any Acquired Company, and notice of each actual or alleged occurrence during such three (3) year period that could give rise to a claim under any such insurance policy has been duly submitted to the applicable insurer. No insurer has (a) denied or disputed (or otherwise reserved its rights with respect to) the coverage of any claim submitted under any insurance policy or (b) to the Company's Knowledge, threatened to cancel or not renew any insurance policy. Except as disclosed on Schedule 3.25, to the Company's Knowledge, no insurer plans to raise the premiums for, or materially alter any of the terms of coverage under, any such insurance policy. Except as disclosed on Schedule 3.25, after the Closing each Acquired Company will continue to have the same coverage under all such insurance policies and none of such insurance policies provides for any retrospective premium adjustment or other experience-based liability on the part of any Acquired Company. To the Company's Knowledge, there is no claim which, individually or in the aggregate with other claims, could reasonably be expected to impair any current or historical limits of insurance available to any Acquired Company, nor has any current or past insurer of any Acquired Company become insolvent.

3.26. Powers of Attorney. Except as set forth on Schedule 3.26, no Acquired Company has general or special powers of attorney outstanding (whether as grantor or grantee thereof).

3.27. Bank Accounts. Schedule 3.27 sets forth a full and complete list of each bank, trust company, savings institution, brokerage firm, mutual fund or other financial institution with which the Company maintains an account or safe deposit box, the number of each such account or box, and the names of the Persons authorized to draw on such accounts or to access such boxes. All cash in such accounts is held in demand deposits and is not subject to any restrictions as to withdrawals.

3.28. No Brokers. Except as set forth on Schedule 3.28, no Acquired Company has or will have any Liability of any kind to, or is subject to any claim of, any broker, finder or agent or any similar Person in connection with the Contemplated Transactions other than those which will be borne by the Sellers.

3.29. Disclosure. Neither the representations and warranties contained in this Article 3 or in any certificates furnished by the Company and the Sellers to the Buyer pursuant to this Agreement and the Ancillary Agreements nor any of the Exhibits or Schedules attached hereto contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements and information contained therein not misleading.

#### 4. REPRESENTATIONS AND WARRANTIES REGARDING THE SELLERS.

In order to induce the Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, each Seller hereby severally, and not jointly, represents and warrants to the Buyer, solely as to such Seller, as of the date hereof and as of the Closing Date, that:



4.1. Organization. If not an individual, such Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

4.2. Power and Authorization. The execution, delivery and performance by such Seller of this Agreement and each Ancillary Agreement to which he, she or it is (or will be) a party and the consummation of the Contemplated Transactions are within the power and authority of such Seller and, if applicable, have been duly authorized by all necessary action on the part of such Seller. This Agreement and each Ancillary Agreement to which such Seller is (or will be) a party (a) has been (or, in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) duly executed and delivered by such Seller and (b) is (or in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) a legal, valid and binding obligation of such Seller, enforceable (subject to the Enforceability Exceptions) against such Seller in accordance with its terms.

4.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 4.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by such Seller of this Agreement and each Ancillary Agreement to which he, she or it is (or will be) a party or (b) consummation of the Contemplated Transactions by such Seller.

4.4. Noncontravention. Except as disclosed on Schedule 4.4, neither the execution, delivery and performance by such Seller of this Agreement or any Ancillary Agreement to which such Seller is (or will be) a party nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval) or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 4.3, violate any provision of any Legal Requirement applicable to such Seller; (b) result in a breach or violation of, or default under, any Contract of such Seller; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contract; or (d) if not an individual, result in a breach or violation of, or default under, such Seller's organizational documents.

4.5. Title. Such Seller is the record and beneficial owner of the outstanding Company Shares set forth beside such Seller's name on Schedule 4.5, and has good and marketable title to such Company Shares, free and clear of all Encumbrances except as are imposed by applicable securities laws. Such Seller has full right, power and authority to transfer and deliver to the Buyer valid title to the Company Shares held by such Seller, free and clear of all Encumbrances. The assignments, endorsements, stock powers and other instruments of transfer delivered by such Seller to the Buyer at the Closing will be sufficient to transfer such Seller's entire interest, legal and beneficial, in such Seller's Company Shares and, immediately following the Closing, the Buyer will be the record and beneficial owner of such Company Shares, and have good and marketable title to such Company Shares, free and clear of all Encumbrances except as are imposed by applicable securities laws. Except pursuant to this Agreement, there is no Contract pursuant to which such Seller has, directly or indirectly, granted any option, warrant or other right to any Person to acquire or vote any Company Shares or other equity interests in any Acquired Company.

4.6. No Brokers. Except as disclosed in Schedule 4.6, such Seller has no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions, and such Seller agrees to satisfy in full any Liability required to be disclosed on Schedule 4.6.

## 5. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

In order to induce the Company and each of the Sellers to enter into and perform this Agreement and to consummate the Contemplated Transactions, the Buyer represent and warrant to the Sellers, as of the date hereof and as of the Closing Date, that:

5.1. Organization. Each Buyer is duly organized, validly existing and in good standing under the laws of the where such Buyer is formed or organized.

5.2. Power and Authorization. The execution, delivery and performance by each Buyer of this Agreement and each Ancillary Agreement to which it is (or will be) a party and the consummation of the Contemplated Transactions are within the power and authority of such Buyer and have been duly authorized by all necessary action on the part of such Buyer. This Agreement and each Ancillary Agreement to which such Buyer is (or will be) a party (a) has been (or, in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) duly executed and delivered by such Buyer and (b) is (or, in the case of Ancillary Agreements to be entered into at or prior to the Closing, will be) a legal, valid and binding obligation of such party, enforceable (subject to the Enforceability Exceptions) against such Buyer in accordance with its terms.

5.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 5.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by the Buyer of this Agreement and each Ancillary Agreement to which it is (or will be) a party or (b) consummation of the Contemplated Transactions by such Buyer.

5.4. Noncontravention. Neither the execution, delivery and performance by such Buyer of this Agreement or any Ancillary Agreement to which it is (or will be) a party nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval) or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 5.3, violate any provision of any Legal Requirement applicable to such Buyer; (b) result in a breach or violation of, or default under, any Contract of such Buyer; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contract; or (d) result in a breach or violation of, or default under, such Buyer's organizational documents.

5.5. No Brokers. Such Buyer has no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions for which any of the Sellers could be liable.

5.6. Investment Intention. Each Buyer is purchasing the respective Shares for its own account and with the present intention of holding such securities for investment purposes and not with a view to sell or otherwise disposes of the Shares in connection with any public distribution in violation of applicable securities Legal Requirements. Each Buyer is an "accredited investor" as defined in Regulation D promulgated under the 1933 Act. Each Buyer has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of

its investment in the Acquired Companies pursuant to this Agreement. Each Buyer acknowledges that the Shares purchased by such Buyer have not been registered under the 1933 Act or any state or foreign securities Legal Requirements and that the Shares purchased pursuant hereto may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed without registration under the 1933 Act and any applicable state or foreign securities Legal Requirements, or an exemption therefrom.

5.7. Financial Resources. The Buyer has access to adequate cash to pay the Purchase Price and, if applicable, the Earn-Out Payment, when due and payable, and to consummate the Contemplated Transactions. Each Buyer acknowledges and agrees that, notwithstanding anything to the contrary contained in this Agreement, in no event shall the receipt or availability of any funds or financing by or to the Buyer or any of its Affiliates or any other financing transaction be a condition to any of the Buyer's obligations under this Agreement or to consummate the Contemplated Transactions.

5.8. No Other Representations. The Buyer has conducted, to its satisfaction, its own independent investigation of the condition, operations and business of the Acquired Companies and, in making its determination to proceed with the Contemplated Transactions, and the Buyer has relied solely upon (i) the representations and warranties in Article 3 and Article 4 (in each case, as modified by the Schedules hereto), and (ii) the results of its own independent investigation. Except for the representations and warranties in Article 3 and Article 4 (in each case, as modified by the Schedules), (a) neither the Sellers nor the Company is making, and the Buyer has not and will not rely upon, any other statements, representations or warranties whatsoever, express or implied, with respect to the Acquired Companies or their respective businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of the business, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Acquired Companies furnished or made available to the Buyer or its Representatives in expectation of, or in connection with, the Contemplated Transactions, or in respect of any other matter or thing whatsoever, (b) no representation or warranty of the Sellers or any of their agents, employees or representatives shall form the basis of any fraud or tort claim of the Buyer, at law or in equity, against Seller or Seller's agents, employees or representatives with respect thereto or with respect to any related matter, except for a claim for Intentional Fraud, and (c) none of the Company, the Sellers or any stockholder, officer, manager, agent, representative or employee of any of them has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement and subject to the limited remedies herein provided.

## 6. COVENANTS.

6.1. Further Assurances. Each of the parties hereto hereby agrees to use reasonable efforts to take all actions and to do all things as are necessary, proper or advisable in order to consummate and make effective the Contemplated Transactions.

6.2. Conduct of Business. Except as provided in this Agreement or with the Buyer's written consent, until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company will, and will cause the other Acquired Companies to, (a) conduct its



businesses in the Ordinary Course of Business and (b) use its reasonable best efforts to preserve its properties, business and relationships with its suppliers, customers and others having business relationships with it. The Sellers' Representative or the Company will advise the Buyer promptly in writing of any development having a Material Adverse Effect. Without limiting the generality of the foregoing, until the earlier of the Closing or the termination of this Agreement in accordance with its terms, except as provided in this Agreement or as set forth on Schedule 6.2, without the written consent of the Buyer, the Company will not, and will cause the other Acquired Companies not to:

6.2.1. declare, set aside or pay any dividend or other distribution with respect to the Company's Capital Stock (other than in cash) or redeem, purchase or otherwise acquire any of its Capital Stock;

6.2.2. (a) create, incur or assume any additional Debt for borrowed money; (b) mortgage, pledge or otherwise encumber, incur or suffer to exist any Encumbrance on any of its properties or assets; (c) create or assume any other Debt, except accounts payable incurred in the Ordinary Course of Business; (d) guarantee any Debt of another Person or enter into any "keep well" or other agreement to maintain any financial condition of another Person; or (e) make any loans, advances or capital contributions to, or investments in, any other Person;

6.2.3. (a) issue, sell or otherwise dispose of any equity interests of any class or grant any warrants, options or rights to subscribe for equity interests or any class of securities convertible into or exchangeable for, or which otherwise confer on the holder any right to acquire, any equity interests of any class, or redeem, repurchase or otherwise acquire any such securities; or (b) split, combine or reclassify any of its equity interests;

6.2.4. fail to comply with all applicable Legal Requirements and with all orders of any Governmental Authority;

6.2.5. amend the organizational documents of any Acquired Company or merge or consolidate with or into any other corporation or other Person;

6.2.6. sell, lease, license, transfer, assign or otherwise dispose of any assets or rights of any Acquired Company, other than the disposition of inventory and fixed assets in the Ordinary Course of Business;

6.2.7. enter into any new line of business or acquire any business organization or division thereof;

6.2.8. acquire or invest in, or agree to acquire or to invest in, any assets or businesses, whether by merger, consolidation or other business combinations or asset or stock purchases, except purchases of materials, equipment and supplies in the Ordinary Course of Business;

6.2.9. forgive, cancel or compromise any Debt owing to it or any claims which it may have possessed, in each case outside the Ordinary Course of Business, or waive any right of substantial value or discharge or satisfy any material noncurrent liability;

6.2.10. make, agree to make or delay any capital expenditures in excess of \$100,000 individually or \$200,000 in the aggregate or enter into or agree to enter into any other transaction in excess of \$200,000 in the aggregate;

6.2.11. make any change in any Acquired Company's accounting methods or practices, except as required by Legal Requirement or changes in GAAP;

6.2.12. delay or postpone the payment of accounts and notes payable and other Liabilities, outside the Ordinary Course of Business or delay or defer the purchase of, or payment for, any material assets or services;

6.2.13. accelerate or demand early payment of accounts and notes receivable outside the Ordinary Course of Business;

6.2.14. enter into, negotiate, amend or extend any collective bargaining agreements or other agreements with a Union;

6.2.15. hire, engage or terminate the employment or engagement of any employee, officer, director or independent contractor who will earn annual base compensation in excess of \$100,000, except where such termination is for cause or initiated by the employee;

6.2.16. (a) increase or decrease the compensation or benefits of any officer, director, employee or independent contractor of any Acquired Company (x) outside the Ordinary Course of Business or (y) whose annual base compensation exceeds \$100,000, (b) grant any severance or termination pay to any officer, director, employee or independent contractor of any Acquired Company not otherwise provided for under any Employee Plan in effect as of the date hereof, (c) loan or advance any money or other property to, or enter into any other transaction with, any officer, director, employee or individual independent contractor of any Acquired Company or any other Affiliate of the Company or a Seller or (d) establish, adopt, enter into, amend, modify or terminate any Employee Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be an Employee Plan if it were in existence as of the date of this Agreement, except for changes required by Legal Requirement;

6.2.17. fail to maintain, renew or obtain all necessary Permits required for its business;

6.2.18. enter into, terminate or amend any Contract of a type required to be disclosed pursuant to Section 3.19.1;

6.2.19. make or pledge to make any charitable or other capital contribution;

6.2.20. settle any pending or threatened litigation;

6.2.21. enter into any joint venture, partnership or similar arrangement for the conduct of business;

6.2.22. make, change or revoke any Tax election, elect or change any method of accounting for Tax purposes, amend any Tax Return, waive or extend any statute of limitations in respect of Taxes, surrender any right to claim a refund of Taxes, settle or

compromise (or enter a closing agreement with respect to) any Action in respect of Taxes, enter into any Contract in respect of Taxes with any Governmental Authority, or take any action that could increase the Taxes of any Acquired Company for any period ending after the Closing Date or decrease any Tax attribute of any Acquired Company existing on the Closing Date;

6.2.23. (a) request or take out any loan or other financial assistance, including under the CARES Act, including pursuant to the Paycheck Protection Program or the Economic Injury Disaster Loan Program or otherwise participate in, apply for or receive any benefit under the CARES Act, the Families First Act or any other government stimulus or relief program; or (b) take any other action set forth in Section 3.15 that would have needed to be disclosed had such action been taken prior to the date of this Agreement; or

6.2.24. authorize, or agree or commit to do, any of the foregoing actions.

6.3. Access to Information. Until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company and the Sellers will permit the Buyer and its Representatives to have reasonable access to the properties, personnel, books, records, contracts, information and documents of the Acquired Companies to conduct such examinations and investigations of the Acquired Companies as the Buyer deems reasonably necessary; provided, however, that such examinations and investigations (a) shall be conducted during the normal business hours of the Company, (b) shall not unreasonably interfere with the operations and activities of the Company and (c) shall not include any documents and instruments of any Seller or such Seller's Affiliates that may be protected by an attorney-client privilege or any attorney work product doctrine. The Company to cooperate in all reasonable respects with the Buyer's examinations and investigations. Notwithstanding anything herein to the contrary, each Seller shall have the right to retain and remove from the Company's property or premises, including electronically, any item described in clauses (c) (solely to the extent relating to documents or communications of the Sellers or their Affiliates other than the Company).

6.4. Notices and Consents.

6.4.1. The Company will, and will cause the Acquired Companies to give any notices to third parties, and to use their commercially reasonable efforts to obtain any third-party consents, that the Buyer may reasonably request in connection with the matters referred to on Schedule 3.4; provided, that the Company shall not be required to make any payments, incur any Liability, or offer or grant any material accommodation to any third party in connection with obtaining any such consent. Subject to the express provisions of this Section 6.4, each of the parties will (and the Company will cause each of the other Acquired Companies to) use its commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents with, to give or cause to be given any notices to, to make any filings with, and to obtain any qualifications, orders, authorizations, consents, and approvals of Governmental Authorities as are necessary for the consummation of the Contemplated Transactions.

6.4.2. In furtherance and not in limitation of the foregoing, each of the parties shall prepare and file, or cause to be prepared and filed, any notification pursuant to the HSR Act and any applicable foreign antitrust or competition Legal Requirements that is required to be

made by such party or its ultimate parent with respect to the Contemplated Transactions and all other filings, submissions and registrations required to be made by such party and its Affiliates under applicable Legal Requirements, in each case, as promptly as reasonably practicable after, and in no event more than ten (10) Business Days following, the date of this Agreement. The parties shall furnish each other with all necessary information and cooperate with each other in connection with the preparation of such filings, submissions and registrations and seek to secure the expiration or termination of all applicable waiting periods under the HSR Act (and any applicable foreign antitrust or competition Legal Requirements) and to obtain all such authorizations, consents, waivers, approvals, permits and orders as soon as practicable following the date of this Agreement. The Buyer, on the one hand, and the Sellers, on the other hand, shall provide each other reasonable opportunity to review and comment on any filing, submission, registration or other written communication to be given to, and consult with each other in advance of any meeting or conference with, the Federal Trade Commission (the “FTC”), the Antitrust Division of the Department of Justice (the “DOJ”) or any other Governmental Authority in connection with the efforts taken pursuant to this Section 6.4.2 or otherwise in connection with the Contemplated Transactions. Subject to the Confidentiality Agreement, the parties will coordinate and provide commercially reasonable cooperation to the other party in connection with exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods including under the HSR Act (and any applicable foreign antitrust or competition Legal Requirements), to the extent applicable. The Buyer and the Sellers’ Representative shall consult and cooperate with the other and consider in good faith the views of the other, including furnishing, or causing to be furnished, to each other’s counsel, such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act; provided, however, that the Buyer shall have the right to direct the process by which the parties hereto seek to avoid or eliminate impediments under any antitrust, competition, trade regulation or foreign investment regulation Legal Requirement, including by directing the strategy and making final determinations related to the review or investigation of the transactions by any Governmental Authority, attending all meetings, discussions, and communications with any Governmental Authority except to the extent that a Governmental Authority may request to communicate exclusively with one party, and agreeing to any extension of time related to the HSR approval or foreign antitrust approval. From the date hereof until all antitrust approvals contemplated herein are received, except as specifically required by this Agreement, neither party shall take any action that would reasonably be expected to impede the ability of the parties hereto to consummate the Contemplated Transactions.

6.4.3. If any investigation, inquiry or other Action, whether initiated by a Governmental Authority or a private party, arising out of or relating to any such filing, submission or registration or otherwise relating to the Contemplated Transactions is initiated or threatened, the Buyer, on the one hand, and the Company and the Sellers, on the other hand, shall (a) promptly notify the other party of any material oral or written communication it or any of its Affiliates receives from any Governmental Authority or private party in connection therewith; (b) permit the other to review in advance any proposed material communication by such party to any Governmental Authority or private party; and (c) to the extent permitted by the FTC, the DOJ and other relevant Persons, give the other the opportunity to attend and participate in any meetings and conferences relating to such filings, submissions, registrations

and Actions, whether in person, by telephone or other electronic means. The parties shall promptly respond to all inquiries made by the FTC, DOJ and any other applicable Governmental Authorities in connection with such filings, submissions or registrations or otherwise in connection with the Contemplated Transactions, and promptly provide to such Governmental Authorities any additional information and documentary material requested under applicable Legal Requirements. If any objections are raised or asserted with respect to the Contemplated Transactions under any Legal Requirements or if any Action is instituted (or threatened to be instituted) by the FTC, the DOJ or any other applicable Governmental Authority or any private party challenging any of the Contemplated Transactions as being in violation of any applicable Legal Requirements or which would otherwise prevent, impede or delay the consummation of the Contemplated Transactions, the parties shall use their commercially reasonable efforts to resolve any such objections or Actions so as to permit consummation of the Contemplated Transactions as soon as reasonably practicable; provided, that no party shall be required to, or be permitted to without the prior written consent of the other party, enter into any agreements or commitments or take any other actions to resolve any such objections or Actions if such agreement, commitment or other action would reasonably be expected, individually or in the aggregate, to (i) prevent consummation of any of the Contemplated Transactions, or (ii) result in any of the Contemplated Transactions being rescinded following the Closing, (iii) limit or otherwise adversely affect the right of the Buyer (or any Affiliate thereof) to own or vote any Shares, control the Company or any other Acquired Company or operate all or any portion of their business, or (iv) limit or otherwise adversely affect the right of the Buyer (or any Affiliate thereof) to own or vote any shares of Capital Stock of the Company or its Affiliates or control the Buyer or any Affiliate of the Buyer or (v) require any remedial action of the Buyer or the Acquired Companies, or their Affilaites', including, but not limited to, the disposition of all or any portion of the Buyer or the Acquired Companies, or their Affiliates' properties or assets.

6.5. Exclusivity. Until the earlier of the Closing or the termination of this Agreement in accordance with its terms, none of the Sellers, the Sellers' Representative or Company will, or permit any other Acquired Company to, (a) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any equity interests or other voting securities of, or any substantial portion of the assets of, the Company (including any acquisition structured as a merger, consolidation, or share exchange) or (b) participate in or authorize such Person's Representatives to participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. The Sellers will not vote their Capital Stock in favor of any such acquisition structured as a merger, consolidation, or share exchange. The Sellers' Representative or the Company will notify the Buyer immediately if any Person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

6.6. Update. Each party hereto will promptly disclose to each other party in writing any material information contained in its representations and warranties and on its related schedules that is incomplete or no longer correct or that, if known prior to the date of this Agreement, would have been required to have been disclosed in such party's schedules to this Agreement. The Sellers' Representative or the Company will notify Buyer of any material casualty or other losses arising between the date hereof and the Closing Date, regardless of whether such losses would have resulted in a breach of a representation or warranty. None of the disclosures pursuant to this Section 6.6

will be deemed to modify, amend or supplement the representations and warranties of any party hereto or to prevent or cure any misrepresentation, breach of warranty or breach of covenant.

6.7. Sellers' Consent. Each of the Sellers hereby consent to this Agreement and the Contemplated Transactions. Each of the Sellers waive any preferential purchase right, right of first refusal, right of first offer, buy-sell right, tag-along right, drag-along right, preemptive right, registration right or other right that would interfere with the consummation of the Contemplated Transactions, including all such rights arising under any provision of the organizational documents of the Company.

6.8. Transaction Expenses; Debt. At or prior to the Closing, the Sellers will cause to be paid and satisfied in full, at their sole expense (except as provided in the final sentence of this Section 6.8), (a) any and all Transaction Expenses, (b) all Debt required to be identified on Schedule 3.9 and (c) any consent or similar fee required to be paid in connection with obtaining any consent required to be set forth on Schedule 3.3, Schedule 3.4, Schedule 4.3 or Schedule 4.4; provided, however, that Taxes payable to a Governmental Authority and included in the calculation of Transaction Expenses will be paid at the time and in the manner required by applicable Legal Requirements. At or prior to Closing, each Seller will, and will cause each of his, her or its Affiliates, to satisfy all Liabilities owing to any Acquired Company in respect of Debt.

6.9. Sellers' Release. Effective as of the Closing, each Seller, on behalf of itself, himself or herself and its, his or her Affiliates, heirs, beneficiaries, trustees, and assigns, hereby irrevocably releases, remises and forever discharges any and all rights and claims that he, she or it has had, now has or might have in the future against the Buyer, any Acquired Company and each person (in any capacity) who is a current or former director, officer or employee of any the Buyer or any Acquired Company, and their respective Affiliates, successors and assigns, of any kind or nature whatsoever to the extent that they comprise a claim of any kind (whether at law or in equity, whether in Contract or tort or otherwise, whether absolute or contingent, and whether known or unknown) except (i) for rights and claims arising under this Agreement or as otherwise required by ERISA, or (ii) claims made under, and to the extent covered by, any extended reporting period endorsements, tail policies or similar coverage of the Acquired Companies. Nothing contained in this Agreement shall be construed to prohibit a Seller from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency; provided, however, that each Seller hereby agrees to waive such Seller's right to recover monetary damages or other individual relief in any such charge, investigation or proceeding or any related complaint or lawsuit filed by the Seller or by anyone else on Seller's behalf. Each of the Sellers, on behalf of itself, himself or herself and its, his or her heirs, beneficiaries, trustees, successors and assigns, expressly waives all rights afforded by any statute which limits the effect of the foregoing release with respect to unknown claims.

6.10. Publicity. The Buyer and its Affiliates will be permitted to publicly disclose the subject matter of this Agreement or the Contemplated Transactions in a manner that is compliant with applicable Legal Requirements. The Sellers will not make any public announcement or disclosure or engage in any discussions with any other Person, in each case, with respect to the subject matter of this Agreement or the Contemplated Transactions without the prior written consent of the Buyer. Notwithstanding anything herein to the contrary, the provisions of this Section 6.10 will not prohibit any disclosure (a) required by any applicable Legal Requirements (provided that the Sellers, unless prohibited by applicable Legal Requirements, provide the Buyer with the



opportunity to review in advance the disclosure) or (b) made in connection with the enforcement of any right or remedy relating to this Agreement or the Contemplated Transactions (provided, that the party intending to make such disclosure shall use commercially reasonable efforts to seek sealing or redaction of publicly-available documents containing or referring to the subject matter of this Agreement or the Contemplated Transactions).

6.11. Restrictive Covenants.

6.11.1. Non-Competition. Each Restricted Person agrees that during the period commencing on the Closing Date and ending on the fifth (5<sup>th</sup>) anniversary of Closing Date (the “Restricted Period”), other than on behalf of any Acquired Company or any of their respective Subsidiaries or Affiliates (collectively, the “Consolidated Group”), such Restricted Person will not anywhere within the Restricted Territory, either individually or for any other Person directly or indirectly invest in, own, manage, control, engage, participate in, or otherwise permit such Restricted Person’s name to be used by, consult with, become associated with, render services for, advise, represent, promote or otherwise assist, in any manner, any Person that owns, invests in, manages, controls, or engages in all or any portion of any business that conducts or otherwise engages in or has or had active plans to conduct or engage in the Business; provided, however, that nothing set forth in this Section 6.11.1 will prohibit any Restricted Person from owning not in excess of two percent (2%) in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange and such Restricted Person does not participate in the management of such corporation. For purposes of this Section 6.11, the term “participate in” and similar variations will include, without limitation, directly or indirectly managing or controlling any corporation, partnership, joint venture, or other entity, whether as a sole proprietor, owner, equity holder, partner, joint venturer, creditor, or otherwise, or rendering any direct or indirect service or assistance to any individual, corporation, partnership, joint venture, and other business entity (whether as a director, officer, manager, supervisor, employee, partner, agent, representative, consultant or otherwise).

6.11.2. Non-Solicitation. Each Restricted Person agrees and acknowledges that, during the Restricted Period, such Restricted Person will not directly or indirectly, and will not assist directly or indirectly any other Person to (a) solicit, hire or engage any employee of any member of the Consolidated Group (or any Person who was an employee of any member of the Consolidated Group within twelve (12) months prior to the Closing Date) or solicit or seek to persuade any such employee of any member of the Consolidated Group to discontinue such employment, (b) call on, solicit, induce, influence or encourage any supplier of any member of the Consolidated Group or any other vendor or business relation (including sales representatives) providing services to any member of the Consolidated Group to terminate or diminish its relationship with them, or (c) seek to persuade any customer (or any Person who was a customer of any member of the Consolidated Group within twelve (12) months prior to the Closing Date) or Prospective Customer of any member of the Consolidated Group to conduct with anyone else, or otherwise call-on, solicit or provide services or products to any such customer or Prospective Customer with respect to, any Business.

6.11.3. Confidentiality. Each Restricted Person will, for a period of eight (8) years, treat and hold as confidential all of the Confidential Information and refrain from disclosing or using any of the Confidential Information except as required by Legal Requirement or legal

process or, to the extent such Restricted Person is an employee of any member of the Consolidated Group, as required in connection with such Restricted Person's employment; provided, however, that the obligations of the Restricted Persons set forth in this sentence will not expire with respect to disclosure of use of written or electronic Confidential Information. In the event that a Restricted Person is requested or required (by oral question or request for information or documents in any proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, such Restricted Person will notify the Buyer promptly (to the extent legally permissible) of the request or requirement so that the Buyer may seek, at the Buyer's sole expense, an appropriate protective order or waive compliance with the provisions of this Section 6.11.3. If, in the absence of a protective order or the receipt of a waiver hereunder, such Restricted Person is, on the advice of counsel, required to disclose any Confidential Information, notwithstanding the foregoing, such Restricted Person may disclose such Confidential Information; provided, however, that such Restricted Person will use such Restricted Person's commercially reasonable efforts to obtain, at the reasonable request of the Buyer and at the Buyer's expense, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed. For the avoidance of doubt, (a) nothing contained in this Section 6.11.3 limits, restricts or in any other way affects a Restricted Person's communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity (or requires such Restricted Person to furnish notice to the Buyer of the same), concerning matters relevant to such governmental agency or entity and (b) no Restricted Person will be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (y) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (z) in a complaint or other document filed under seal in a lawsuit or other proceeding; provided, however, that notwithstanding this immunity from liability, a Restricted Person may be held liable if such Restricted Person unlawfully accesses trade secrets by unauthorized means.

6.11.4. Inventions. The results and proceeds of each Restricted Person's services to any member of the Consolidated Group (whether prior to or after the Closing Date), including, without limitation, any works of authorship related to any member of the Consolidated Group resulting from such Restricted Person's services during such Restricted Person's employment with any member of the Consolidated Group and any such works in progress, will be works-made-for-hire and the Buyer (or its designee) will be deemed the sole owner throughout the universe of any and all rights of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed, with the right to use the same in perpetuity in any manner Buyer determines in its sole discretion without any further payment to such Restricted Person whatsoever. If, for any reason, any of such results and proceeds will not legally be a work-for-hire and/or there are any rights which do not accrue to the Buyer under the preceding sentence, then such Restricted Person hereby irrevocably assigns and agrees to assign any and all of such Restricted Person's right, title and interest thereto, including, without limitation, any and all copyrights, patents, trade secrets, trademarks and/or other rights of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed to the Buyer, and the Buyer will have the right to use the same in perpetuity throughout the universe in any manner the Buyer determines without any further payment to such Restricted Person whatsoever. Each such Restricted Person will, from time to time, as may be reasonably requested by the Buyer and at the Buyer's sole



expense, do any and all things that are useful or necessary to establish or document the Buyer's or any Acquired Company's, as applicable, exclusive ownership of any and all rights in any such results and proceeds, including, without limitation, the execution of appropriate copyright and/or patent applications or assignments. To the extent a Restricted Person has any rights in the results and proceeds of such Restricted Person's services to the any member of the Consolidated Group that cannot be assigned in the manner described above, such Restricted Person unconditionally and irrevocably waives the enforcement of such rights. This Section 6.11.4 is subject to, and will not be deemed to limit, restrict or constitute any waiver by the Buyer of any rights of ownership to which the Buyer may be entitled by operation of law by virtue of any member of the Consolidated Group being such Restricted Person's employer.

6.11.5. Additional Obligations. Each Restricted Person understands and agrees that the restrictive covenants contained in this Section 6.11 are in addition to, and not in lieu of, any existing or future non-competition, non-solicitation or other restrictive covenants or similar obligations contained in any other agreements between such Restricted Person and the Buyer or any of its Subsidiaries (including the Acquired Companies) or Affiliates (each, an "Additional Obligation"). By executing this Agreement, each Restricted Person acknowledges, reaffirms and agrees that such Restricted Person is and will continue to be bound by the terms and conditions of such Additional Obligations and no Additional Obligations will be deemed to supersede or override any other Additional Obligations.

6.11.6. Acknowledgment. Each Restricted Person agrees and acknowledges that (a) such Restricted Person's services have been of special, unique, and extraordinary value to the Acquired Companies and (b) the potential harm to the Buyer and the Consolidated Group of the non-enforcement of any provision of this Agreement outweighs any potential harm to such Restricted Person of its enforcement by injunction or otherwise. Each Restricted Person recognizes that the territorial, time, and scope limitations set forth in this Section 6.11 are reasonable and are properly required to protect the Buyer's substantial investment under this Agreement and for the protection of the Buyer's legitimate interest in client relationships, goodwill, and trade secrets of the Buyer's and its Affiliates' (including the Acquired Companies') businesses, and that such limitations would not impose any undue burden upon such Restricted Person. In the event that any such territorial, time, or scope limitation is deemed to be invalid, prohibited, or unenforceable by a court of competent jurisdiction, The Buyer and the Restricted Person agree to the reduction of any or all of said territorial, time, or scope limitations to such an area, period, or scope as said court will deem reasonable or enforceable under the circumstances. Each Restricted Person agrees that the Restricted Period applicable to such Restricted Person shall be tolled, and shall not run, during any period that such Restricted Person is in breach of this Section 6.11.

6.12. Intentionally Deleted.

6.13. ESOP Matters.

6.13.1. Simultaneous with the Closing, the ESOP Trustee shall satisfy all amounts outstanding under the ESOP Loan by applying a portion of the Purchase Price received by the ESOP Trust to the repayment of the ESOP Loan.

6.13.2. Prior to the Closing, the Company shall adopt the ESOP Amendment.

6.13.3. Upon and after the Closing, the ESOP Trustee shall cooperate, at the Company's expense, with the Company and any successor trustee with respect to the ESOP, as amended at Closing, in providing information in its possession necessary to administer the ESOP, as amended, including with respect to information held by the ESOP Trustee necessary to facilitate record keeping, performing any financial audit, and any filing with any Governmental Authority.

6.13.4. Following the Closing, the Company shall provide a one-time window (in the defined contribution plan or its successor) of not less than sixty (60) days within six (6) months following the Closing date during which ESOP participants may obtain a partial in-service distribution of up to twenty percent (20%) from his or her respective account balances (without regard to the amounts that are paid or payable in respect of the Earn-Out Payment) thereunder.

6.13.5. The ESOP Trust, the Company and the Buyer shall cooperate fully in connection with any required amendments to the ESOP, the in-service distribution referenced in Section 6.13.4 and rollover of ESOP participant balances. Such cooperation shall include the provision of records and information which are reasonably relevant to such actions.

6.13.6. Prior to the Closing Date, the Company shall take all necessary actions to terminate the ATI 401(k) Profit Sharing Plan (the "Company 401(k) Plan") contingent on the consummation of the transactions contemplated hereby, other than the final distribution of assets in connection such termination, in accordance with the terms of such plan and all Legal Requirements, with such termination to be effective prior to the Closing Date (such effective date, the "Plan Termination Date"). Such actions shall include, without limitation, the (a) amendment to the Company 401(k) Plan to include amendments, if any, that are required (x) to be made in compliance with Section 401(a) of the Code, such as in relation to the SECURE Act, and (y) to permit, in addition to any cash distribution, the Plan to distribute participant plan loans for rollover into another qualified retirement plan; (b) adoption of resolutions terminating the Company 401(k) Plan as of the Plan Termination Date, approving the amendment set forth in clause (a) and providing for full vesting of participant account balances as of the Plan Termination Date to the extent required by Legal Requirements, and (c) timely providing such notices of such Company 401(k) Plan termination to third party service providers as may be required under the terms of the applicable service provider agreements. The Company shall provide copies of such actions, resolutions and notices to the Buyer at least five (5) business days in advance of the Closing (or such earlier date as is required pursuant to the terms of the Company 401(k) Plan or any other agreements), for review and comment, which comments shall be taken in good faith.

6.13.7. Prior to and after the Closing, the Company and the ESOP Trustee shall each promptly notify the others of any non-routine Action that is pending, or to the knowledge of the applicable party, threatened, by a Governmental Authority or an ESOP participant, and in any event within ten (10) Business Days following the date of such notice; provided that the Company shall be obligated to notify the ESOP Trustee of only those Actions relating to the Closing or the pre-Closing period with respect to which the ESOP Trustee or the ESOP Trust could be adversely affected.

6.13.8. Prior to the Closing and subject to ERISA, the ESOP Trustee shall use commercially reasonable efforts to obtain the ESOP Fairness Opinion, which shall utilize the same valuation methodologies as those used in the Preliminary ESOP Fairness Opinion.

6.14. RWI Policy. The Buyer (or an Affiliate thereof) shall pay or cause to be paid, all expenses related to the underwriting and issuance of the RWI Policy in accordance with the terms and conditions of the RWI Policy. The Buyer covenants and agrees to not cancel, redeem or take any action that would adversely affect the terms and conditions of the RWI Policy. The Buyer shall not, and shall cause its Affiliates not to, enter into or consent to, any amendment to, or termination, cancellation or revocation of, the RWI Policy in any manner that could reasonably be expected to allow the insurer thereunder or any other Person to subrogate or otherwise make or bring any action or proceedings against the Sellers or any of the Seller Indemnified Persons based upon, arising out of, or related to this Agreement that could otherwise increase the liability of the Sellers. Neither any revocation, cancellation or modification of the RWI Policy after the date hereof, nor any inability of, nor any denial by the RWI Policy insurer to pay Losses, shall result in additional liability hereunder to the Sellers.

6.15. Liquidation. Prior to Closing, the Company shall dissolve ATI Industrial Automation Export Company, wind up and terminate its affairs, liquidate its assets, and provide reasonable evidence of the foregoing to the Buyer.

6.16. China Lease Confirmation Letter. Prior to Closing, the China Subsidiary shall use commercially reasonable efforts to obtain the China Lease Confirmation Letter, provided, that obtaining the China Lease Confirmation Letter shall not be a condition precedent to the obligation of the Buyer to close.

## 7. CONDITIONS TO CLOSING.

7.1. Conditions Precedent to Each Party's Obligations to Close. The respective obligations of each party to consummate the Contemplated Transactions on the Closing Date are subject to the satisfaction or waiver at or prior to the Closing of the following conditions precedent:

7.1.1. no Action shall be pending or threatened before any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent consummation of any of the Contemplated Transactions or (ii) cause any Contemplated Transaction to be rescinded following consummation, and no such injunction, judgment, order, decree, ruling or charge shall be in effect; provided, however, that the parties shall use their commercially reasonable efforts to have any such order, decree or injunction vacated or reversed;

7.1.2. Buyer, the Sellers' Representative and the Escrow Agent shall have executed and delivered the Escrow Agreement; and

7.1.3. any applicable waiting periods (and any extensions thereof) under the HSR Act and any applicable foreign antitrust or competition Legal Requirements will have expired or otherwise been terminated.

7.2. Conditions Precedent to Obligations of the Buyer. The obligation of Buyer to consummate the Contemplated Transactions on the Closing Date is subject to the satisfaction or waiver as of the Closing Date of the following conditions precedent:

7.2.1. there shall have occurred no Material Adverse Effect with respect to the Acquired Companies;

7.2.2. other than the Fundamental Representations, the representations and warranties of the Company and each Seller contained in Article 3 and Article 4 shall be true and correct at and as of the Closing Date, disregarding all qualifications and exceptions contained therein relating to materiality or a Material Adverse Effect, with the same force and effect as if those representations and warranties had been made at and as of such time (except to the extent such representations or warranties speak as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), except for such failures to be true and correct which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

7.2.3. the Fundamental Representations shall be true and correct at and as of the Closing Date with the same effect as if those representations and warranties had been made at and as of such time (except to the extent such representations or warranties speak as of an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date);

7.2.4. the Sellers shall have performed, in all material respects, all obligations and complied with all covenants contained herein that are necessary to be performed or complied with by them at or before the Closing;

7.2.5. the Buyer shall have received a certificate signed by each of the Sellers certifying the satisfaction of all the conditions set forth in Section 7.1.1 and of the conditions set forth in Sections 7.2.1, 7.2.2, 7.2.3 and 7.2.4;

7.2.6. the Buyer shall have received from the Company:

(a) written evidence that (i) the Company has obtained a directors and officers errors and omissions “tail” or “extended reporting period” insurance policy with a term of at least six (6) years and (ii) the ESOP Trustee has obtained a fiduciary liability insurance policy that contains errors and omissions coverage for the ESOP Trustee, acting in its capacity as such, in connection with services that it provided in connection with the Contemplated Transactions (whether occurring before or after the Closing);

(b) good standing certificates for each of the Acquired Companies, except for the China Subsidiary, from each of their respective jurisdictions of organization and each jurisdiction in which each Acquired Company is qualified to do business as a foreign entity, in each case dated as of a recent date prior to the date hereof;

(c) copies of all authorizations, consents, approvals, registrations, notices, filings or waivers that are required to consummate the Contemplated Transactions, as disclosed or required to be disclosed on Schedule 3.4, Schedule 4.3, or Schedule 4.4 and no

such authorization, consent, approval, registration, notice, filing or waivers will have been revoked;

(d) executed versions of the filings, organizational document amendments and other transfer documents related to the China Subsidiary acquisition as disclosed on Schedule 3.3, which filings shall be made by the Buyer post-Closing;

(e) a certification (in such form as may be reasonably requested by counsel to the Buyer) certifying that no interest in the Company is, or has been during the relevant period specified in Code Section 897(c)(1)(A)(ii), a “United States real property interest” within the meaning of Code Section 897(c), and a form of notice to the Internal Revenue Service prepared in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2);

(f) all documents incident to all corporate and other proceedings in connection with the Contemplated Transactions (reasonably satisfactory in form and substance to the Buyer, and the Buyer will have received all original and certified or other copies of such documents as it may reasonably request);

(g) each of the Ancillary Agreements, executed and delivered by each of the other parties thereto;

(h) any Section 338 Forms requested by the Buyer prior to the Closing, executed and delivered by each of the other parties thereto;

(i) the Payoff Letters, executed and delivered by each of the other parties thereto, and acknowledgements of payment in full from any Person that will be paid Transaction Expenses pursuant to Section 6.8, in each case, reasonably satisfactory in form and substance to the Buyer;

(j) written evidence of the termination of all Contracts (if any) regarding voting, transfer or other arrangements relating to the Company Shares and the termination (or modification if so specified) of all other Contracts with Affiliates listed on Schedule 7.2.6(j), in each case, in form and substance reasonably satisfactory to the Buyer;

(k) a copy of the ESOP Amendment;

(l) a copy of the amendment to the engagement letter between the ESOP Trustee and the Company which requires the ESOP Trustee to maintain a fiduciary liability insurance policy that contains errors and omissions coverage for the ESOP Trustee, acting in its capacity as such, in connection with services that it provided in connection with the Contemplated Transactions;

(m) a certified copy of the resolutions adopted by the shareholders of the China Subsidiary authorizing the execution, delivery and performance of this Agreement and approving the transfer of China Shares contemplated hereby;

(n) a restrictive covenant agreement, which will include non-competition and non-solicitation covenants, reasonably acceptable in form and substance to the Buyer, executed and delivered by each Key Employee; and

(o) quarterly income statements and balance sheets for the 3-month periods ended September 30, 2020, December 31, 2020 and March 31 2021 and ending June 30, 2021, prepared based on the same level of adjustments as the Reviewed Financials (other than any notes customarily accompanied therewith).

7.2.7. The ESOP Trustee shall have delivered a certificate, dated as of the Closing Date, in the form of Exhibit G.

7.2.8. The ESOP Trustee shall have delivered a copy of the ESOP Fairness Opinion.

7.3. Conditions Precedent to Obligations of the Sellers. The obligation of the Sellers to consummate the Contemplated Transactions on the Closing Date is subject to the satisfaction or waiver as of the Closing Date of the following conditions precedent:

7.3.1. the representations and warranties of Buyer set forth in Article 5 shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if those representations and warranties had been made at and as of such time (except to the extent such representations or warranties speak as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

7.3.2. Buyer shall have performed, in all material respects, all obligations and complied with all covenants contemplated herein that are necessary to be performed or complied with by it at or before Closing; and

7.3.3. the Sellers shall have received a certificate signed by the Buyer certifying the satisfaction of all the conditions set forth in Section 7.1.1 and of the conditions set forth in Sections 7.3.1 and 7.3.2;

7.3.4. the Sellers shall have received from the Buyer copies of all authorizations, consents, approvals, registrations, notices, filings or waivers that are required by the Buyer to consummate the Contemplated Transactions;

7.3.5. the Sellers shall have received from the Buyer each of the Ancillary Agreements, executed and delivered by Buyer;

7.3.6. the Sellers shall have received from the Buyer all documents incident to all corporate and other proceedings in connection with the Contemplated Transactions, which shall be reasonably satisfactory in form and substance to Sellers' Representative; and

7.3.7. the ESOP Trustee shall have obtained the ESOP Fairness Opinion.



## 8. INDEMNIFICATION.

### 8.1. Indemnification.

8.1.1. Indemnification by Sellers. Subject to the limitations set forth in this Article 8, each Seller will indemnify, defend and hold harmless the Buyer and each of its Affiliates (including, after the Closing, each Acquired Company) and their respective directors, officers, shareholders, equity holders, partners, members, managers, employees, agents, consultants and advisors, the Representatives and Affiliates of each of the foregoing Persons, and the heirs, executors, administrators, successors and assigns of each of the foregoing Persons (each, a “Buyer Indemnified Person”), from, against and in respect of any and all Actions, Liabilities, Government Orders, Encumbrances, losses, damages, bonds, dues, assessments, fines, penalties, Taxes, fees, costs (including costs of investigation, defense and enforcement of this Agreement), expenses or amounts paid in settlement (in each case, including reasonable attorneys’ and experts fees and expenses), whether or not involving a Third-Party Claim (collectively, “Losses”), which any such Buyer Indemnified Person suffers, sustains or becomes subject to as a result of, arising out of or directly relating to: (a) any breach of, or inaccuracy in, any representation or warranty made by the Company in this Agreement in Article 3, any Ancillary Agreement or in any document, Schedule, instrument or certificate delivered pursuant to this Agreement (in each case, as such representation or warranty would read if all qualifications as to materiality, including each reference to the defined term “Material Adverse Effect,” were deleted therefrom); (b) any breach of, or inaccuracy in, any representation or warranty made by such Seller in Article 4, any Ancillary Agreement or in any document, Schedule, instrument or certificate delivered pursuant to this Agreement (in each case, as such representation or warranty would read if all qualifications as to materiality, including each reference to the defined term “Material Adverse Effect,” were deleted therefrom); (c) any breach or violation of any covenant or agreement of the Company (including under Article 6 and Article 9) prior to Closing; (d) any breach or violation of any covenant or agreement of a Seller (including under Article 6, this Article 8 and Article 9) in or pursuant to this Agreement or any Ancillary Agreement; (e) any Debt or Transaction Expenses not included in the calculation of the Purchase Price; and (f) the Specified Indemnity Matters.

(i) Individual Obligations. The indemnification obligations of the Sellers under Section 8.1.1(a), (c), (e), and (f) shall be individual obligations in accordance with their respective percentage ownership of the Company Shares. The indemnification obligations of the Sellers under Sections 8.1.1(b) and (d) shall be individual obligations of the breaching Seller, and the non-breaching Sellers shall have no indemnification obligation.

(ii) ESOP Limitation. Notwithstanding anything else in this Agreement, the sole source for recovery by the Buyer Indemnified Persons for indemnification by the ESOP Trust pursuant to Section 8.1.1 shall be against its pro rata portion of each of the Carveout Escrow Sub-Account, Indemnity Escrow Sub-Account and any Earn-Out Payment prior to the payment thereof.

(iii) Monetary Limitations. The Sellers will have no obligation to indemnify the Buyer Indemnified Persons pursuant to Section 8.1.1(a) or Section 8.1.1(b) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty

described therein unless the aggregate amount of all such Losses incurred or suffered by the Buyer Indemnified Persons exceeds \$851,000 (the “Deductible”) (at which point the Sellers will indemnify the Buyer Indemnified Persons for all such Losses in excess of amount), and the Sellers’ aggregate liability in respect of claims for indemnification pursuant to Section 8.1.1(a) and Section 8.1.1(b) will not exceed the Indemnity Escrow Amount (the “Cap”); provided, however, that the Deductible will not apply to claims for indemnification pursuant to Section 8.1.1(a) or Section 8.1.1(b) in respect of breaches of, or inaccuracies in, the Fundamental Representations. Notwithstanding anything else in this Agreement, the Sellers’ aggregate liability in respect of claims for indemnification pursuant to any provision of Section 8.1.1(a) and Section 8.1.1(b) will not exceed the Cap, and Sellers’ aggregate liability in respect of claims for indemnification pursuant to any provisions Section 8.1.1 other than Section 8.1.1(a) and Section 8.1.1(b) will not exceed the Carveout Escrow Amount.

(iv) Source of Recovery. If there is determined to be any amount owing to a Buyer Indemnified Person as a result of indemnification pursuant to Section 8.1.1(a) or (b) over the Deductible, such amount shall first be paid and satisfied from the Indemnity Escrow Account, in accordance with this Agreement and the Escrow Agreement and, following such time as the retention amount (as it, or such similar term, is defined in the RWI Policy) has been met, then such Buyer Indemnified Person may, to the extent such Losses are covered thereunder, recover such amount only from the RWI Policy and not from the Sellers other than in the case of Intentional Fraud. If there is determined to be any amount owing to a Buyer Indemnified Person as a result of indemnification pursuant to Section 8.1.1(f), such amount shall be paid and satisfied solely from the Carveout Escrow Account.

(v) No Double Counting: Calculation of Losses. Sellers shall not be liable under Section 8.1.1 for any Losses to the extent such Losses are reflected in the calculation of, or any adjustment to, Transaction Expenses, Cash and Cash Equivalents or Debt taken into account in determining the final Purchase Price. The amount of any Losses will be calculated net of any (i) insurance proceeds (net of all costs and expenses associated with the recovery thereof, including any insurance premium increases resulting from the matter giving rise to indemnification or loss of coverage resulting therefrom) actually received by the Buyer, any other Buyer Indemnified Person or any of their respective Affiliates on account of such Loss other than proceeds actually received pursuant to the RWI Policy.

(vi) RWI Obligations. Notwithstanding the foregoing, but in addition to, Buyer Indemnified Persons shall not be entitled to recover Losses from Sellers under Section 8.1.1 if such Losses would have been covered under the RWI Policy, and coverage for such Losses was (x) not approved solely due to the failure by Buyer Indemnified Person to file a claim or (y) denied under the RWI Policy solely because a Buyer Indemnified Person failed to properly make a claim thereunder or to otherwise comply with the terms thereof. A Buyer Indemnified Person shall use reasonable efforts to obtain any insurance proceeds under the RWI Policy with respect to any claim for indemnification that it has asserted under Section 8.1.1; provided, that “reasonable efforts” shall not include any obligation of any Buyer Indemnified Person to litigate or arbitrate a claim under the RWI Policy.

8.1.2. Indemnification by Buyer. Subject to the limitations set forth in this Article 8, the Buyer will indemnify, defend and hold harmless the Sellers and each of their Affiliates (excluding the ESOP Trustee and the ESOP Trust) and their respective directors, officers,



shareholders, equity holders, partners, members, managers, employees, agents, consultants and advisors, the Representatives and Affiliates of each of the foregoing Persons, and the heirs, executors, administrators, successors and assigns of each of the foregoing Persons (each, a “Seller Indemnified Person”), from, against and in respect of any and all Losses, which any such Seller Indemnified Person suffers, sustains or becomes subject to as a result of, arising out of or directly relating to: (a) any breach of, or inaccuracy in, any representation or warranty made by the Buyer in Article 5, any Ancillary Agreement or in any document, Schedule, instrument or certificate delivered pursuant to this Agreement (in each case, as such representation or warranty would read if all qualifications as to materiality, including each reference to the defined term “Material Adverse Effect,” were deleted therefrom); or (b) any breach or violation of any covenant or agreement of the Buyer (including under Section 2.8) in or pursuant to this Agreement or any Ancillary Agreement.

8.2. Time for Claims. No claim may be made seeking indemnification pursuant to Section 8.1.1(a) or Section 8.1.1(b) for any breach of, or inaccuracy in, any representation or warranty unless written notice as described in either Section 8.3 or Section 8.4 below is provided to the Sellers’ Representative prior to the date that is (x) with respect to the Fundamental Representations, six (6) years from the Closing Date and (y) with respect to any other representation or warranty, eighteen (18) months from the Closing Date. No claim may be made seeking indemnification pursuant to Section 8.1.1(c), Section 8.1.1(d), Section 8.1.1(e) or Section 8.1.1(f) for any breach or inaccuracy thereof unless written notice describing such breach or inaccuracy in reasonable detail in light of the circumstances then known to the Buyer Indemnified Person is provided to the Sellers’ Representative prior to sixty (60) days following the applicable statute of limitations. Any claim seeking indemnification thus made shall survive until it is finally resolved and any obligations with respect thereto are fully satisfied. Except as provided herein, claims for indemnification pursuant to any other provision of Sections 8.1.1 and 8.1.2 are not subject to the limitations set forth in this Section 8.2. Notwithstanding anything to the contrary herein, the remaining balances of the Indemnity Escrow Account and the Carveout Escrow Account shall be released after eighteen (18) months, except for (a) amounts that have been disbursed to Buyer Indemnified Persons for Losses as provided in this Article VIII and (b) amounts necessary to satisfy any unresolved claims made prior to such date, if any, and the Buyer and the Sellers’ Representative will jointly instruct the Escrow Agent to make said disbursement to the Sellers.

### 8.3. Third-Party Claims.

8.3.1. Notice of Claim. If any third party notifies a Buyer Indemnified Person or Seller Indemnified Person (the “Indemnified Party”) with respect to any matter which may give rise to a claim for indemnification under this Article 8 (a “Third-Party Claim”) by Sellers or the Buyer, as applicable (the “Indemnifying Party”), then the Indemnified Party must notify the Indemnifying Party (or the Sellers’ Representative in the case of any Seller) in writing of the existence of such Third-Party Claim by the first to occur of (i) thirty (30) days from the receipt of written notice of such Third-Party Claim, or (ii) if the Indemnifying Party was served with a complaint with respect to the Third-Party Claim, then five (5) days prior to the answer with respect to such complaint is due (the “Notice Period”) and, to the extent available at such time, describe with reasonable particularity the circumstances supporting the Indemnified Party’s belief that it is entitled to indemnification under this Article 8 in such writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article

8, except (i) to the extent such delay actually and materially prejudices the Indemnifying Party in the defense thereof, or (ii) in the event that the claim for indemnification is in respect of breaches, or inaccuracies in, the Fundamental Representations and the Indemnified Party fails to provide notice as required by this Section 8.3.1 within the Notice Period, the Indemnifying Party shall only be obligated to indemnify the Indemnified Party for Losses in excess of the Deductible.

8.3.2. Assumption of Defense, etc. Subject to the terms of the RWI Policy, the Indemnifying Party, at its sole cost and expense, will be entitled to defend the Indemnified Party against a Third-Party Claim by appointing counsel reasonably acceptable to the Indemnified Party (which approval shall not be unreasonably withheld) if (a) the Indemnifying Party gives written notice to the Indemnified Party within fifteen (15) days after receipt of notice of the Third-Party Claim that it will assume the defense of the Indemnified Party, (b) the Third-Party Claim involves only claims for monetary damages and does not seek any nonmonetary relief against the Indemnified Party and does not relate to Taxes other than solely Taxes for a Pre-Closing Tax Period, (c) the insurer(s) (or any managing general underwriter) under the RWI Policy must not have elected to exercise its rights to assume and conduct the defense of such Third-Party Claim, and (d) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently. The Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of a Third-Party Claim being defended by the Indemnifying Party pursuant to the immediately preceding sentence.

8.3.3. Limitations on Indemnifying Party. Subject to the terms of the RWI Policy, the Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to a Third-Party Claim without the prior written consent of the Indemnified Party unless such judgment, compromise or settlement (a) provides for the payment by the Indemnifying Party of money as the sole relief for the claimant, (b) results in the full and general release of the Indemnified Parties from all Liabilities arising out of or relating to the Third-Party Claim and (c) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and has no effect on any other Actions that may be asserted against the Indemnified Party.

8.3.4. Indemnified Person's Control. Subject to the terms of the RWI Policy, if the Indemnifying Party does not deliver on a timely basis the notice contemplated by clause (a) of Section 8.3.2, at any time fails to conduct the defense of a Third-Party Claim actively and diligently or is or becomes unable to conduct the defense of a Third-Party Claim pursuant to Section 8.3.2, the Indemnified Party may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third-Party Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith). If such notice is given by the Indemnifying Party on a timely basis and the Indemnifying Party conducts the defense of a Third-Party Claim actively and diligently but any of the other conditions in Section 8.3.2 is or becomes unsatisfied, the Indemnified Party may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third-Party Claim; provided, however, that the Indemnifying Party will not be bound by the entry of any such judgment consented to, or any such compromise or settlement effected, without the Indemnifying Party's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed). In the event that the Indemnified Party

conducts the defense of a Third-Party Claim pursuant to this Section 8.3.4, the Indemnifying Party will remain responsible for any and all other Losses that the Indemnified Party may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third-Party Claim to the fullest extent provided in this Article 8.

8.4. Direct Claims. Notice of any claim seeking indemnification, that is not a Third-Party Claim (a “Direct Claim”), shall be made pursuant to this Section 8.4. The Indemnified Party must (a) notify the Indemnifying Party in writing of the existence of such Direct Claim within thirty (30) days after receiving knowledge of the facts underlying such Direct Claim and describe with reasonable particularity the circumstances supporting the Indemnified Party’s good faith belief that it is entitled to indemnification under this Article 8, (b) estimate the amount, if reasonably practicable and feasible, of the Loss that may be sustained by the Indemnified Party and (c) deliver material written evidence related to the Direct Claim (to the extent feasible). The Indemnifying Party shall have thirty (30) days from receipt of the notice of a Direct Claim within which to advise the Indemnified Party in writing if it will satisfy such Direct Claim in whole or in part, or otherwise disputes the Direct Claim. If the Indemnifying Party does not deliver a response within the 30-day period, the Indemnifying Party shall be deemed not to dispute such claim, in which case the amount of Losses alleged in such Direct Claim notice will be conclusively deemed to be an obligation of the Indemnifying Party and the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party. If the Indemnifying Party delivers a response within the 30-day period indicating that it disputes one or more of the matters identified in the Direct Claim notice, then the Indemnifying Party and the Indemnified Party will promptly meet and use their reasonable efforts to settle the dispute. If the Indemnifying Party and the Indemnified Party are unable to reach agreement within thirty (30) days after the Indemnifying Party delivered a response disputing such Direct Claim, then either the Indemnifying Party or the Indemnified Party may pursue any available remedies, subject to the limitations set forth in this Agreement. The amount of a claim shall not be considered a Loss if neither party seeks dispute resolution as permitted in this Agreement within sixty (60) days after the Indemnifying Party notifies the Indemnified Party that it disputes the Indemnifying Party’s obligation to indemnify such Direct Claim.

8.5. No Circular Recovery. Notwithstanding anything to the contrary in this Agreement, each Seller hereby agrees that he, she or it will not make any claim for indemnification against the Buyer or any other Buyer Indemnified Person (including, after the Closing, any Acquired Company) by reason of the fact that such Seller was a controlling Person, director, manager, officer, employee or Representative of any Acquired Company with respect to any claim brought by a Buyer Indemnified Person against any Seller relating to this Agreement or any of the Contemplated Transactions or that is based on any facts or circumstances that form the basis for an indemnity claim by a Buyer Indemnified Person hereunder.

8.6. Knowledge and Investigation. Sellers shall not be liable under this Article 8 for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had actual knowledge of such inaccuracy or breach prior to the Closing, as disclosed in writing by the Sellers on Schedules provided pursuant to this Agreement.

8.7. Manner of Payment. Any payment to be made by any Seller pursuant to this Article 8 will be effected by wire transfer of immediately available funds from such Seller to an account of the U.S. Buyer designated by the U.S. Buyer within five days after the determination thereof. Any

such indemnification payments will include interest at the long-term Applicable Federal Rate as defined in Section 1274(d) of the Internal Revenue Code of 1986, as amended, in effect on the first day of the applicable calendar year, from the date any such Loss is suffered or sustained to the date of payment. Any payment amounts owing from any Seller pursuant to this Article 8 will first be made to the extent possible from the Indemnity Escrow Sub-Account and thereafter from the Carveout Escrow Sub-Account to the extent thereof; provided, that the Buyer Indemnified Persons will also be entitled to (but will not be required to) satisfy any amounts due or payable to any of the Buyer Indemnified Persons by any Seller pursuant to this Article 8 by setting off against any other amounts otherwise due and payable by any of the Buyer Indemnified Persons or any of their Affiliates to such Seller, including any Earn-Out Payment. Notwithstanding anything to the contrary in this Agreement, the ESOP Trust's maximum liability to indemnify the Buyer Indemnified Parties under this Article 8 shall be limited to its pro rata portion of the Indemnity Escrow Amount and the Carveout Escrow Amount plus its pro rata portion of any Earn-Out Payment prior to payment thereof.

8.8. Tax Treatment. All indemnification and other payments under this Article 8 will, to the extent permitted by applicable Legal Requirements, be treated for all income Tax purposes as adjustments to the Purchase Price solely with respect to the Purchase Price of the Company Shares. Neither the Buyer nor the Sellers will take any position on any Tax return, or before any Governmental Authority, that is inconsistent with such treatment unless otherwise required by any applicable Legal Requirement.

8.9. Exclusive Remedy. Except for the dispute resolution procedures contained in Section 2.6, Section 2.8.2(c) or Section 9.9 with respect to the subject matter thereof, the indemnification rights of the parties under this Article 8 are the sole and exclusive rights of the parties for breaches of representations, warranties, covenants, agreements or obligations in this Agreement. Subject to the preceding sentence, each party hereby irrevocably waives, to the fullest extent permitted under law, any and all rights, claims and causes of action they may have against another party and the other Indemnifying Parties, including under statute, common law, tort or equity, including fraud other than Intentional Fraud, as a result of any Losses or any and all other damages incurred by such party or an Indemnified Party with respect to this Agreement and transactions contemplated herein, whether or not such damages are in excess of the maximum amounts permitted to be recovered pursuant to the indemnification provisions herein. Notwithstanding the foregoing, nothing herein shall limit the rights or remedies the parties may have to seek any equitable relief, including specific performance. The parties hereto acknowledge and agree that the RWI Policy is intended to be a contract between Buyer (or an Affiliate thereof) and the insurer(s) (and/or managing general underwriter) under the RWI Policy separate and apart from this Agreement. As such, none of the limitations or exceptions set forth in this Article 8 shall in any way limit, affect, restrict, modify or impair the ability of any Buyer Indemnified Person to make claims under or recover under the RWI Policy.

## 9. TAX MATTERS

### 9.1. Preparation of Tax Returns.

9.1.1. Sellers' Representative, at the Sellers' sole cost and expense, shall prepare, or cause to be prepared, any Passthrough Return that reflects a taxable period (or portion thereof) ending on or before the Closing Date due (after taking into account all appropriate

extensions) after the Closing Date. The Sellers' Representative shall provide the Buyer with a draft of such Passthrough Return no later than thirty (30) days before the due date for filing such Tax Return (taking into account valid extensions) for the Buyer's review and comment, and the Sellers' Representative shall incorporate the Buyer's reasonable comments. Such Passthrough Returns shall be prepared in accordance with applicable Legal Requirements and this Agreement and shall be prepared, and each item thereon treated, in a manner consistent with past practices, if any, employed with respect to the applicable Acquired Company, except as otherwise required by applicable Legal Requirements. Neither the Sellers, the Sellers' Representative nor any Acquired Company shall take any action that would result in any Acquired Company treated as an "S corporation" for U.S. federal income tax purposes ceasing to be an "S corporation" as defined in Code Section 1361(a)(1) or any Subsidiary of such a Acquired Company ceasing to be a "qualified subchapter S subsidiary" as defined in Code Section 1361(b)(3)(B) for any Pre-Closing Tax Period.

9.1.2. Notwithstanding anything herein to the contrary, prior to the Closing Date, the Company shall, at the Company's sole cost and expense, prepare and file, or cause to be prepared and filed, with the appropriate Governmental Authority all outstanding Tax Returns of each Acquired Company for prior taxable years, including those set forth on Schedule 3.15.1. The Company shall provide the Buyer with drafts of such Tax Returns at least twenty (20) days prior to the Closing Date for the Buyer's review and comment, and the Company shall incorporate the Buyer's reasonable comments. Such Tax Returns shall be prepared in accordance with applicable Legal Requirements and this Agreement and shall be prepared, and each item thereon treated, in a manner consistent with past practices, if any, employed with respect to the applicable Acquired Company, except as otherwise required by applicable Legal Requirements.

9.2. Straddle Period. For each Acquired Company, in the case of any taxable period that includes (but does not end on) the Closing Date (a "Straddle Period"), the amount of any Taxes of such Acquired Company based upon or measured by net income or gain for the Pre-Closing Tax Period will be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which such Acquired Company holds a beneficial interest will be deemed to terminate at such time). The amount of Taxes for a Straddle Period, other than Taxes of such Acquired Company based upon or measured by net income or gain, which relate to the Pre-Closing Tax Period will be deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period. To the extent any Tax Return for any Straddle Period is reasonably expected to result in the Sellers being liable for any amount, including under this Agreement or to any Governmental Authority, the Buyer shall provide the Sellers' Representative with a draft of such Straddle Period Tax Return no later than ten (10) days before the due date for filing such Straddle Period Tax Return (taking into account valid extensions) for the Sellers' Representative's review and comment, and the Buyer shall incorporate the Sellers' Representative's reasonable comments. Such Straddle Period Tax Returns shall be prepared in accordance with applicable Legal Requirements and this Agreement and shall be prepared, and each item thereon treated, in a manner consistent with past practices of the Acquired Companies, if any, employed with respect to the applicable Acquired Company, except as otherwise required by applicable Legal Requirements.



9.3. Tax Sharing Agreements. All Tax sharing agreements, Tax allocation agreements or similar Contracts and all powers of attorney with respect to or involving any Acquired Company will be terminated prior to the Closing Date and, after the Closing, the Acquired Companies will not be bound thereby or have any Liability thereunder.

9.4. Cooperation on Tax Matters. The Buyer, the Acquired Companies, and the Sellers will cooperate fully and promptly, as and to the extent reasonably requested by any of the other parties, in connection with any Tax matters relating to the Acquired Companies (including by the provision of reasonably relevant records or information), consistent with the provisions hereof. The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the assisting party or parties.

9.5. 338(h)(10) Election. The Sellers shall join the Buyer in making an election under Code Section 338(h)(10) (and any corresponding election under state, local, or foreign law) (a “Section 338(h)(10) Election”) with respect to the Buyer’s purchase of the Company Shares pursuant to this Agreement. The Buyer will be responsible for the preparation of all forms and schedules required to be filed in connection with any Section 338(h)(10) Election (“Section 338 Forms”), including IRS Form 8023 and all attachments required to be filed therewith pursuant to the applicable Treasury Regulations (“Form 8023”) and including Form 8883, and the expense related to such preparation. The Sellers shall cooperate in executing any Section 338 Forms and shall execute and deliver to the Buyer prior to or at the Closing any Section 338 Forms that it is required to execute (or join in executing with the Buyer) including Form 8023 and Form 8883. The Buyer shall retain the original of each completed and executed Section 338(h)(10) Election and shall be responsible for filing such election with the Internal Revenue Service.

9.6. Purchase Price Allocation. Attached hereto as Schedule 9.6 are the principles for an allocation for Tax purposes of the purchase price and any other items among the assets of the Acquired Companies. The Buyer shall deliver to the Sellers’ Representative a draft of a proposed allocation prepared in accordance with Schedule 9.6 within ninety (90) days following the Closing Date. The Sellers’ Representative shall have twenty (20) days following receipt of such proposed allocation to deliver to the Buyer in writing any objections to such proposed allocation. The Buyer and the Sellers’ Representative shall negotiate in good faith to resolve any differences in their respective positions regarding the proposed allocation. If, after the passage of twenty (20) days, the Buyer and the Sellers’ Representative are unable to reach a mutually acceptable allocation, the parties shall resolve the disagreement using the dispute resolution procedures in Section 2.6 (such mutually acceptable allocation or allocation finally determined pursuant to the dispute resolution procedures in Section 2.6, as the case may be, the “Purchase Price Allocation”). The Buyer will update the Purchase Price Allocation as needed thereafter to account for any adjustments under Section 2.7 and any other adjustments to the purchase price (as determined for Tax purposes). The parties shall report the allocation of the purchase price among the assets of the Acquired Companies in a manner consistent with the Purchase Price Allocation or any such updated Purchase Price Allocation, including in preparing and filing IRS Form 8594 or any comparable form under state or local Tax Legal Requirements, and neither party shall take any position in any forum that is inconsistent therewith, except as required by a determination of a Governmental Authority.

9.7. Transfer Taxes. All sales, use and transfer Taxes, including any value added, equity transfer, gross receipts, stamp duty and real, personal, or intangible property transfer Taxes (collectively, “Transfer Taxes”), due by reason of the consummation of the purchase of the Shares

under this Agreement, including any interest or penalties in respect thereof, shall be borne fifty percent (50%) by the Buyer and fifty percent (50%) by the Sellers; provided, that any such Transfer Taxes related to the acquisition of the China Shares shall be borne one hundred percent (100%) by the Buyer. The Sellers and the Buyer shall cooperate with each other in filing any Tax Returns associated with such Taxes and use their commercially reasonable efforts to minimize the Transfer Taxes attributable to the transfer of the Shares.

9.8. Tax Refunds. Any Tax refunds that are received by the Buyer or the Acquired Companies and any amounts credited against any Tax of the Acquired Companies, in lieu of a refund, to which the Buyer or the Acquired Companies become entitled for Tax periods of the Acquired Companies either (a) ending on or before the Closing Date or (b) beginning before and ending after the Closing Date to the extent such refunds or credits relate to the portion of such taxable periods ending on the Closing Date (as determined pursuant to Section 9.2), will be for the account of the Sellers, except to the extent that any such refund (or credit) (i) was taken into account in the calculation of Purchase Price or (ii) is attributable to the carryback of any loss, deduction, or Tax attribute generated in a taxable period (or portion thereof) beginning after the Closing Date. The Acquired Companies or Buyer will pay over to the Seller an amount equal to any such refunds or amounts of any such credit, without interest (other than any interest received from the applicable Governmental Authority with respect to such refund or credit) and net of any Tax or other cost incurred in respect of the receipt, accrual or payment of such refund or credit, within ten (10) Business Days after receipt of such refund or utilization of such credit on the applicable Tax Return.

9.9. Tax Gross-Up. As a result of the 338(h)(10) Election, the Sellers will incur greater Tax liabilities than they would incur if the 338(h)(10) Election is not made. No later than ten (10) days prior to the Closing Date, the Sellers' Representative shall deliver to the Buyer a written schedule setting forth a calculation of and the proposed Tax Gross-Up Amount. For calculation purposes, the "Tax Gross-Up Amount" shall be the estimated sum, for each of the Sellers in the aggregate, of (a) the difference between (x) the amount of individual Tax that each Seller will pay if the 338(h)(10) Election is not made and (y) the amount of individual Tax that such Seller will pay with the 338(h)(10) Election in effect, and (b) an amount that is grossed up to result in an aggregate after tax payment to such Seller to equal to the difference computed in clause (a) and under this clause (b). The Buyer shall have the right to review the calculation and any work sheets and other papers prepared in connection therewith. At least five (5) days prior to the Closing Date, the Buyer shall provide written notice to the Sellers' Representative that the Buyer (i) either agrees with the Tax Gross-Up Amount or (ii) disputes the Tax Gross-Up Amount. If the Buyer fails to timely provide notice to the Sellers' Representative, then the Buyer shall be deemed to agree with the Tax Gross-Up Amount provided to the Buyer by the Sellers' Representative. If the Buyer timely disputes Tax Gross-Up Amount, then the Buyer and the Sellers' Representative shall meet to discuss and shall resolve in good faith any dispute between them concerning the calculation of the Tax Gross-Up Amount. If they cannot resolve any such dispute, then the matter shall be submitted to the Independent Referee to resolve the matter or matters in dispute between them and determine the Tax Gross-Up Amount. The decision of the Independent Referee as herein provided shall be conclusive, binding and final upon the parties hereto and the parties shall have no recourse to judicial intervention in respect of its determination of the Tax Gross-Up Amount and such determination shall be deemed the final determination of the Tax Gross-Up Amount. The Buyer and the Sellers' Representative shall each pay their own costs and expenses incurred under this Section 9.9. The fees and expenses of the Independent Referee will be paid by the Sellers from the Sellers' Representative Expense Account, on the one hand, and by the Buyer, on the other hand, in

inverse proportion to their success on the merits in the resolution of the items in dispute. If the Buyer agrees, or is deemed to agree, with the Tax Gross-Up Amount or a final determination of the Tax Gross-Up Amount is made by the Independent Referee, then, for the purposes of making payments under Section 2.3 at the Closing, the Enterprise Value will be increased by the amount of the Tax Gross-Up Amount.

## 10. TERMINATION.

10.1. Termination. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time, prior to the Closing, only as follows:

10.1.1. by mutual written consent of the Buyer and the Sellers' Representative at any time prior to the Closing;

10.1.2. by the Buyer, upon written notice to the Sellers' Representative at any time prior to the Closing, in the event that any Seller has breached any representation, warranty, or covenant contained in this Agreement such that the conditions specified in Section 7.2 would not be satisfied, the Buyer has notified the Sellers' Representative of the breach, and, if such breach can be cured, the breach has continued without cure for a period of twenty (20) days after the notice of breach; provided, that the Buyer will not have the right to terminate this Agreement pursuant to this Section 10.1.2 if it is then in material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement;

10.1.3. by the Sellers' Representative, upon written notice to the Buyer at any time prior to the Closing, in the event that the Buyer has breached any representation, warranty, or covenant contained in this Agreement such that the conditions specified in Section 7.3 would not be satisfied, the Sellers' Representative has notified the Buyer of the breach, and the breach, if it can be cured, has continued without cure for a period of twenty (20) days after the notice of breach; provided, that the Sellers' Representative will not have the right to terminate this Agreement pursuant to this Section 10.1.3 if the Sellers' Representative is then in material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement;

10.1.4. by Buyer or the Seller' Representative, upon written notice to the other party at any time prior to the Closing, if the Closing shall not have occurred on or before December 31, 2021; provided, however, that the right to terminate this Agreement under this Section 10.1.4 shall not be available to any party whose breach of any obligation under this Agreement has been the cause of, or has resulted in, the failure of the Closing to occur on or before such date; or

10.1.5. by Buyer or the Sellers' Representative, upon written notice to the other party at any time prior to the Closing, if any court of competent jurisdiction in the United States or any other Governmental Authority in the United States shall have issued an order, decree or ruling or taken any other Action restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, decree, ruling or other Action shall have become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 10.1.5 shall not be available to any party whose breach of any



obligation under this Agreement has been the cause of, or has resulted in, such order, decree, ruling or other Action.

10.2. Effect of Termination. If this Agreement is terminated pursuant to Section 10.1 and the Contemplated Transactions are not consummated, all rights and obligations of the parties under or pursuant to this Agreement shall terminate without further liability of either party to the other; provided, however, (a) the provisions contained in this Section 10.2, the publicity provisions contained in Section 6.3 (Publicity), the expenses provision contained in Section 6.8 (Transaction Expenses); the provisions of Section 11.10 (Governing Law), Section 11.11 (Jurisdiction; Venue; Service of Process), Section 11.14 (Provisions Concerning the Sellers' Representative) shall survive any such termination and (b) the Confidentiality Agreement, dated September 11, 2020, between the Buyer and the Company (the "Confidentiality Agreement") will survive the termination of this Agreement pursuant to its terms; provided, further, that no termination shall relieve any party from liability for any breach of this Agreement.

## 11. MISCELLANEOUS

11.1. Notices. All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided: (a) by hand (in which case, it will be effective upon delivery unless not on a Business Day, in which case it will be effective upon the next Business Day); (b) by email (if the sender does not receive a bounce-back notification and on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid)); or (c) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the Business Day after being deposited with such courier service), in each case, to the address (or facsimile number) listed below:

If to the Company or any Non-ESOP Seller, to:

BLDP, LLC  
2828 Brenfield Drive  
Raleigh, NC 27606  
Email Address: Rlittle1031@yahoo.com  
Attention: Robert Little

with a copy to (which will not constitute notice to the Company):

Manning, Fulton & Skinner, P.A.  
3605 Glenwood Avenue, Suite 500  
Raleigh, NC 27612  
Attention: William B. Gwyn, Jr.  
Email Address: bgwyn@manningfulton.com

If to the ESOP Trust, to:

ATI Industrial Automation, Inc. Employee Stock Ownership Trust  
c/o GreatBanc Trust Company  
801 Warrenton Road, Suite 500  
Lisle, IL 60532  
Attention: Debbie Williams  
Email: dwilliams@greatbanctrust.com

with a copy to (which will not constitute notice to the Company):

Polsinelli PC  
900 W. 48th Place, Suite 900  
Kansas City, MO 64112-1895  
Attention: Wallace E. Brockhoff  
Email: wbrockhoff@polsinelli.com

If to the Buyer, to:

Novanta Corporation  
125 Middlesex Turnpike  
Bedford, MA 01730  
Attention: Robert Buckley, Chief Financial Officer  
Email Address: robert.buckley@novanta.com

with copies to (which will not constitute notice to the Buyer, or the Company (after the Closing)):

Ropes & Gray LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600  
Attention: Zachary Blume  
Email Address: Zachary.Blume@ropesgray.com

Each of the parties to this Agreement may specify a different address or facsimile number by giving notice in accordance with this Section 11.1 to each of the other parties hereto.

11.2. Succession and Assignment; No Third-Party Beneficiary. Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns (each of which such successors and permitted assigns will be deemed to be a party hereto for all purposes hereof). Nothing herein expressed or implied will give or be construed to give any Person, other than the parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder, including any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment. No party may assign, delegate or otherwise transfer either this Agreement or any of his, her or its rights, interests or obligations hereunder without the prior written approval of the other parties; provided, however, that the Buyer may (a) assign any or all of its rights and interests hereunder to one or more of its Affiliates, (b) designate one or more of its Affiliates to perform its obligations hereunder and (c) assign any or all of its rights or obligations hereunder to any purchaser of all or substantially all of the consolidated assets of such Person. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement is intended to, or does, constitute the establishment of, or an amendment to, any Company Plan or any other employee benefit plan of the Acquired Companies.

11.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement will be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer, the Company (prior to the Closing) and the Sellers, or in the case of a waiver, by the party against whom the waiver is to be effective. No waiver by any party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach, violation, default of, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof.

11.4. Entire Agreement. This Agreement, together with the Ancillary Agreements and any documents, instruments and certificates explicitly referred to herein or therein, constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any and all prior discussions, negotiations, proposals, undertakings, understandings and agreements (including any draft agreements) with respect thereto, whether written or oral (including that certain letter of intent, dated March 20, 2021, by and between Buyer and the Company), none of which will be used as evidence of the parties' intent.

11.5. Schedules. All section headings in the Schedules correspond to the sections of this Agreement, but information provided in any section of the Schedules shall constitute disclosure for purposes of each section of this Agreement where it is reasonably apparent on its face that such information applies to such other Schedule. Unless the context otherwise requires, all capitalized terms used in the Schedules shall have the respective meanings assigned to such terms in this Agreement. Certain information set forth in the Schedules is included solely for informational purposes, and may not be required to be disclosed pursuant to this Agreement. No reference to or disclosure of any item or other matter in the Schedules shall be construed as an admission or indication that such item or other matter is required to be referred to or disclosed in the Schedules. No disclosure in the Schedules relating to any possible breach or violation of any agreement or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The inclusion of any information in the Schedules shall not be deemed to be an admission or acknowledgment by any Seller or the Company that in and of itself, such information is material to or outside the ordinary course of the business or is required to be disclosed on the Schedules. No disclosure in the Schedules shall be deemed to create any rights in any third party.

11.6. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission, pdf or other means of electronic signature) in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument.

11.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each party hereto intends that such provision will be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements and to otherwise give effect to the intent of the parties.

11.8. Headings. The headings contained in this Agreement are for convenience purposes only and will not in any way affect the meaning or interpretation hereof.

11.9. Construction. The parties hereto 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 will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The parties hereto intend that each representation, warranty, covenant and agreement contained herein will have independent significance. If any party hereto has breached or violated, or if there is an inaccuracy in, any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached or violated, or in respect of which there is not an inaccuracy, will not detract from or mitigate the fact that the party has breached or violated, or there is an inaccuracy in, the first representation, warranty, covenant or agreement. Notwithstanding anything express or implied in this Agreement, Buyer's rights and remedies with respect to claims for Intentional Fraud are fully preserved.

11.10. Governing Law. Subject to Section 2.6, Section 2.8.2(c) and Section 9.9, this Agreement, the rights of the parties under this Agreement, and all actions or proceedings arising in whole or in part under or in connection with the negotiation, terms and performance of this Agreement (whether at law or in equity, whether sounding in Contract, tort or otherwise), will be governed by and construed and enforced in accordance with the domestic substantive laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction; provided, that the transfer agreements and documents set forth on Schedule 3.3 shall be governed by the laws of China.

11.11. Jurisdiction; Venue; Service of Process.

11.11.1. Jurisdiction. Subject to the provisions of Section 2.7 solely with respect to the disputes referred to therein, each party to this Agreement, by his, her or its execution hereof, hereby irrevocably (a) submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware or, if but only if that court is unavailable, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware (such courts, in that order, the "Courts"), for the purpose of any action or proceeding described in the first sentence of Section 11.11, (b) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action or proceeding, any claim that he, she or it is not subject personally to the jurisdiction of the Courts, that venue in the Courts is improper, that his, her or its property is exempt or immune from attachment or execution, that any such action or proceeding should be dismissed on grounds of *forum non conveniens* or improper venue, that such action or proceeding should be transferred or removed to any other court, that such action or proceeding should be stayed by reason of the pendency of some other action or proceeding in any other court or that this Agreement or the subject matter hereof may not be enforced in or by the Courts and (c) agrees not to commence or prosecute any such action or proceeding other than before the Courts. Notwithstanding the previous sentence, a party hereto may commence any action or proceeding in any court solely for the purpose of enforcing an order or judgment issued by one of the Courts.

11.11.2. Service of Process. Each party hereto hereby, by his, her or its execution hereof, irrevocably (a) consents to service of process in any action or proceeding described in Section 11.11 in any manner permitted by Delaware law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his, her or its address specified pursuant to Section 11.1 will constitute good and valid service of process in any such action or proceeding and (c) waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such action or proceeding any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process therein.

11.12. Specific Performance. Each of the parties hereto acknowledges and agrees that the other parties hereto would be irreparably damaged in the event that any of the terms or provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties hereto hereby agrees that the other parties hereto will be entitled to an injunction or injunctions to prevent breaches or violations of any of the terms or provisions of this Agreement, and to enforce specifically the performance by the other party under this Agreement and the terms and provisions hereof in any action or proceeding described in the first sentence of Section 11.11.1 in addition to any other remedy to which he, she or it may be entitled, at law or in equity. Each party hereto further agrees that, in the event of any action or proceeding for an injunction or specific performance in respect of any such threatened or actual breach or violation, he, she or it will not assert that a remedy at law would be adequate, or that the party seeking such relief would not be irreparably harmed absent such relief. Notwithstanding the foregoing, the Buyer shall not be entitled to seek a remedy of specific performance to cause the Closing to occur as a remedy solely for an ESOP Closing Breach.

11.13. Waiver of Jury Trial. **THE PARTIES HERETO HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING DESCRIBED IN SECTION 11.11. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

11.14. Provisions Concerning the Sellers' Representative.

11.14.1. Appointment. Effective as of the Closing, and without further act of the Sellers, the Sellers' Representative will be appointed as agent and attorney-in-fact for each of the Sellers, for and on behalf of the Sellers, to give and receive notices and communications and to take any and all action on behalf of the Sellers pursuant to this Agreement, the Escrow Agreement and in connection with the transactions contemplated hereby and thereby. If the Sellers' Representative is no longer willing or able to serve as the Sellers' Representative, the Sellers' Representative (or, if the Sellers' Representative has ceased to exist, the holder of the majority of the equity interests of the previous Sellers' Representative) may appoint a replacement. No bond will be required of the Sellers' Representative, and the Sellers'

Representative will not receive compensation for its services; provided, that the Sellers' Representative will be entitled to reimbursement of expenses pursuant to Section 11.14.3.

11.14.2. Actions of the Sellers' Representative. A decision, act, consent or instruction of the Sellers' Representative (acting in its capacity as the Sellers' Representative) will constitute a decision of all of the Sellers and will be final, conclusive and binding upon each of the Sellers, and the Buyer may rely upon any such decision, act, consent or instruction of the Sellers' Representative as being the decision, act, consent or instruction of each of the Sellers. The Buyer and its Affiliates are hereby relieved from any liability to any Person for any acts done by the Buyer in accordance with such decision, act, consent or instruction of the Sellers' Representative. The Sellers' Representative will not be held liable by any Seller for actions or omissions in exercising or failing to exercise all or any of the power and authority of the Sellers' Representative pursuant to this Agreement, except in the case of the Sellers' Representative's bad faith or willful misconduct. The Sellers' Representative will be entitled to rely on the advice of counsel, public accountants or other independent experts that it reasonably determines to be experienced in the matter at issue, and will not be liable to any Seller for any action taken or omitted to be taken in good faith based on such advice. Each Seller will severally, in accordance with their respective pro rata shares based on the relative portions of the Purchase Price received pursuant to this Agreement, indemnify Sellers' Representative from any losses, damages, judgments, assessments, fines, penalties, fees, costs, expenses, liabilities, awards, demands, claims, actions, damages or amounts paid in settlement (in each case, including reasonable attorneys' fees and expenses and costs of investigations) arising out of its serving as the Sellers' Representative hereunder, except for such losses and similar items arising out of or caused by the Sellers' Representative's bad faith or willful misconduct. The Sellers' Representative is serving in its capacity as such solely for purposes of administrative convenience, and is not personally liable in such capacity for any of the obligations of any Seller hereunder, and the Buyer, on behalf of itself and its Affiliates, agrees that neither the Buyer nor its Affiliates will look to the personal assets of the Sellers' Representative, acting in such capacity, for the satisfaction of any obligations to be performed by any of the Sellers hereunder.

11.14.3. Sellers' Representative Expense Amount. The Sellers' Representative Expense Amount will be used to pay costs, fees and expenses incurred by or for the benefit of the Sellers on or after the Closing Date, and will be paid or distributed at the direction and in the sole discretion of the Sellers' Representative.

11.15. Action as ESOP Trustee. The ESOP Trustee has executed and delivered this Agreement and related documents, not in its corporate capacity, but solely as trustee of the ESOP Trust. The performance of this Agreement and the related documents by the ESOP Trustee on behalf of the ESOP Trust and the participants of the ESOP and any and all duties, obligations and liabilities of the ESOP Trustee hereunder will be affected by it only in its capacity as trustee of the ESOP Trust and not in its corporate capacity. Other than in its capacity as trustee of the ESOP Trust, the ESOP Trustee does not undertake nor shall it have any liability or obligation of any nature whatsoever by virtue of the execution and delivery of this Agreement and the related documents or the representations, covenants or warranties contained herein, and no liability shall be asserted or enforceable against the ESOP Trustee by reason of any of the covenants, statements, representations or warranties by any other party contained in this Agreement.



11.16. Conflicts and Privilege. The Buyer acknowledges and agrees that the Non-ESOP Sellers and the Seller Representative shall not be precluded from retaining the services of MFS and ESOP Counsel as its legal counsel, and the ESOP Trustee shall not be precluded from retaining the services of Polsinelli as its legal counsel, in the event of any dispute between the Buyer or the Company, on the one hand, and the Sellers, on the other hand, because such dispute concerns the Contemplated Transactions or whether otherwise involving the Company, notwithstanding, by itself, any result of MFS's or ESOP Counsel's prior representation of the Company or Polsinelli's prior representation of the ESOP Trustee. Notwithstanding the sale of the Shares to the Buyer, the Buyer agrees that neither the Buyer nor the Company shall have the right to assert (and the Buyer shall cause the Company not to assert) the attorney/client privilege as to any attorney/client privileged pre-Closing communications between the Sellers, the ESOP Trustee, the Company or any officer, director or employee of the Company (for the Company and its officers, directors and employees, only with respect to pre-Closing communications), on one hand, and MFS, ESOP Counsel or Polsinelli on the other hand, to the extent that the privileged communications directly relate to the Contemplated Transactions ("Privileged Communications"), provided, however, that no Seller or any of its Affiliates or Representatives may waive any such attorney/client privilege or exception of client confidence in connection with any matter involving a third party without the prior written consent of the Buyer. Notwithstanding the foregoing, in the event that a dispute arises between Buyer or its Affiliates (including the Acquired Companies), on the one hand, and a third party other than any Seller, on the other hand, Buyer and its Affiliates (including the Acquired Companies) may assert the attorney-client privilege to prevent disclosure of confidential communications to such third party and the Buyer and the Sellers will share such privilege with respect to such Privileged Communications solely in respect of any such disputes, provided, however, that neither Buyer nor any of its Affiliates (including the Acquired Companies) may waive such privilege with respect to the Privileged Communications without the prior written consent of the Sellers' Representative, which consent shall not be unreasonably withheld, conditioned or delayed. Except as set forth herein, the parties hereto agree that only the Sellers shall be entitled to assert such attorney/client privilege in connection with any dispute between the parties hereto in connection with such communications following the Closing and the files generated and maintained by MFS, ESOP Counsel and Polsinelli as a result of MFS's and ESOP Counsel's representation of the Company and, if applicable, the Non-ESOP Sellers, and as a result of Polsinelli's representation of the ESOP Trustee, in connection with the Contemplated Transaction or any efforts to sell the Shares to the Buyer or any other Person shall be and become the exclusive property of the Sellers, as applicable.

**[Remainder of the page intentionally left blank – signature pages follow]**

IN WITNESS WHEREOF, each of the undersigned has executed this Stock Purchase Agreement as an agreement under seal as of the date first above written.

THE U.S. BUYER:

NOVANTA CORPORATION

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Authorized Signatory

THE CHINA BUYER:

NOVANTA TECHNOLOGIES (SUZHOU) CO. LTD.

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Authorized Signatory

[Buyer's Signature Page to Stock Purchase Agreement]

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THE COMPANY:

ATI INDUSTRIAL AUTOMATION, INC.

By: /s/ Robert Little

Name: Robert Little

Title: CEO

THE CHINA SUBSIDIARY:

ATI INDUSTRIAL AUTOMATION (LANG FANG) CO., LTD.

By: /s/ Robert Little

Name: Robert Little

Title: President

SELLERS' REPRESENTATIVE

BLDP, LLC

By: /s/ Robert Little

Name: Robert Little

Title: Manager

THE SELLERS:

By: /s/ Robert Little

Name: Robert Little

By: /s/ Dwayne Perry

Name: Dwayne Perry

By: /s/ Keith Morris

Name: Keith Morris

By: /s/ Lynn Harvey

Name: Lynn Harvey

By: /s/ Catherine Morris

Name: Catherine Morris

THE SELLERS:

ATI INDUSTRIAL AUTOMATION EMPLOYEE STOCK  
OWNERSHIP TRUST

By: GreatBanc Trust Company, not in an individual or corporate  
capacity but solely as trustee

By: /s/ Debra L. Williams

Name: Debra L. Williams

Title: Senior Vice President

Not as an individual fiduciary, but solely as an authorized officer of  
GreatBanc Trust Company

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**THIRD AMENDMENT TO**  
**THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

This **THIRD AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT** dated as of September 22, 2021 (this “Amendment”) is made by and among NOVANTA CORPORATION, a Michigan corporation (the “Lead Borrower”), NOVANTA UK INVESTMENTS HOLDING LIMITED, a private limited company incorporated in England and Wales (the “U.K. Borrower”), Novanta Europe GmbH, a limited liability company (Gesellschaft mit beschränkter Haftung) formed and existing under the laws of Germany (the “German Borrower” and jointly and severally together with the Lead Borrower and the U.K. Borrower, collectively the “Borrowers”), NOVANTA INC., a company continued and existing under the laws of the Province of New Brunswick, Canada (“Holdings”), each of the Subsidiaries of Holdings listed under the caption “GUARANTORS” on the signature pages hereto (each a “Guarantor” and collectively the “Guarantors”), each lender party hereto and BANK OF AMERICA, N.A., as Administrative Agent (in such capacity, the “Administrative Agent”), Swing Line Lenders and L/C Issuer.

WHEREAS, the Borrowers, the lenders from time to time party thereto (collectively, the “Lenders” and individually, a “Lender”) and the Administrative Agent are parties to that certain Third Amended and Restated Credit Agreement dated as of December 31, 2019, as amended by the First Amendment to Third Amended and Restated Credit Agreement dated as of March 27, 2020, and as amended by the Second Amendment to the Third Amended and Restated Credit Agreement dated as of June 2, 2020 (as further amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”), pursuant to which the Lenders have agreed to make certain financial accommodations to the Borrowers; and

WHEREAS, the Borrowers, the Guarantors and the Administrative Agent wish to amend the Credit Agreement in certain respects, all on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties signatory hereto agree as follows:

1. Definitions. Except as otherwise defined in this Amendment, terms defined in the Credit Agreement are used herein as defined therein.
2. Amendments to Credit Agreement. Subject to the satisfaction of the conditions precedent specified in Section 3 below, the undersigned parties hereby agree that, effective as of the date hereof, the Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~), and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages attached as Exhibit A hereto.
3. Conditions Precedent. The amendments to the Credit Agreement set forth in Section 2 hereof shall become effective upon satisfaction of the following conditions precedent:

(a) the Lead Borrower shall have delivered to the Administrative Agent a counterpart of this Amendment executed by each Loan Party; and

(b) as of 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted this Amendment to all Lenders and the Lead Borrower, Lenders comprising the Required Lenders have not delivered to the Administrative Agent written notice that such Required Lenders object to this Amendment.

4. Effect on Loan Documents. The Credit Agreement (as amended hereby) and the other Loan Documents shall be and remain in full force and effect in accordance with their terms and hereby are ratified and confirmed in all respects. Except as expressly set forth herein the execution, delivery, and performance of this Amendment shall not operate as a waiver or an amendment of any right, power, or remedy of the Administrative Agent or any Lender under the Credit Agreement or any other Loan Document, as in effect prior to the date hereof. Each of the Loan Parties hereby ratifies and confirms in all respects all of its obligations under the Credit Agreement (as amended hereby) and the other Loan Documents to which it is a party.

5. No Novation; Entire Agreement. This Amendment evidences solely the amendment of the terms and provisions of the obligations of the Lead Borrower and the other Loan Parties under the Loan Documents and is not a novation or discharge thereof. There are no other understandings, express or implied, among the Lead Borrower, the other Loan Parties, the Administrative Agent and the Lenders regarding the subject matter hereof or thereof.

6. Choice of Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

7. ELECTRONIC SIGNATURES; COUNTERPARTS. THIS AMENDMENT AND ANY DOCUMENT, AMENDMENT, APPROVAL, CONSENT, INFORMATION, NOTICE, CERTIFICATE, REQUEST, STATEMENT, DISCLOSURE OR AUTHORIZATION RELATED TO THIS AMENDMENT (EACH A "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 AGREES THAT ANY ELECTRONIC SIGNATURE ON OR ASSOCIATED WITH ANY COMMUNICATION SHALL BE VALID AND BINDING ON EACH OF THE LOAN PARTIES 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 EACH OF THE LOAN PARTIES ENFORCEABLE AGAINST SUCH 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 BY THE ADMINISTRATIVE AGENT AND EACH OF THE LENDERS 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 LENDERS 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, THE ADMINISTRATIVE AGENT IS UNDER NO OBLIGATION TO ACCEPT AN ELECTRONIC SIGNATURE IN ANY FORM OR IN ANY FORMAT UNLESS EXPRESSLY AGREED TO BY THE ADMINISTRATIVE AGENT PURSUANT TO PROCEDURES APPROVED BY IT; PROVIDED, FURTHER, WITHOUT LIMITING THE FOREGOING, (A) TO THE EXTENT THE ADMINISTRATIVE AGENT HAS AGREED TO ACCEPT SUCH ELECTRONIC SIGNATURE, THE ADMINISTRATIVE AGENT AND EACH OF THE LENDERS SHALL BE ENTITLED TO RELY ON ANY SUCH ELECTRONIC SIGNATURE PURPORTEDLY GIVEN BY OR ON BEHALF OF ANY LOAN PARTY WITHOUT FURTHER VERIFICATION AND (B) UPON THE REQUEST OF THE ADMINISTRATIVE AGENT OR ANY LENDER, 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. FOR THE AVOIDANCE OF DOUBT, UPON THE REQUEST OF THE ADMINISTRATIVE AGENT, EACH LOAN PARTY AND EACH LENDER PARTY HERETO HEREBY AGREES TO DELIVER A MANUALLY SIGNED ORIGINAL COUNTERPART OF EACH COMMUNICATION TO THE ADMINISTRATIVE AGENT WITHIN A REASONABLE TIME AFTER THE EFFECTIVENESS OF THIS AMENDMENT.

8. Construction. This Amendment is a Loan Document. This Amendment and the Credit Agreement shall be construed collectively and in the event that any term, provision or condition of any of such documents is inconsistent with or contradictory to any term, provision or condition of any other such document, the terms, provisions and conditions of this Amendment shall supersede and control the terms, provisions and conditions of the Credit Agreement. Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “herein”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”, “therein”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified and amended hereby.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

**BORROWERS:**

NOVANTA CORPORATION

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Chief Financial Officer

NOVANTA UK INVESTMENTS HOLDING LIMITED

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Director

NOVANTA EUROPE GmbH

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Managing Director

---

[Third Amendment to Third A&R Credit Agreement]

**HOLDINGS:**  
NOVANTA INC.

By: /s/ Robert Buckley  
Name: Robert Buckley  
Title: Chief Financial Officer

[Third Amendment to Third A&R Credit Agreement]

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**OTHER GUARANTORS:**

NOVANTA TECHNOLOGIES UK LIMITED

By: /s/ Robert Buckley

Name: Robert Buckley

Title: Director

NDS SURGICAL IMAGING LLC

By: /s/ Robert Buckley

Name: Robert Buckley

Title: President

MED X CHANGE, LLC

By: /s/ Robert Buckley

Name: Robert Buckley

Title: President

NOVANTA MEDICAL TECHNOLOGIES CORP.

By: /s/ Robert Buckley

Name: Robert Buckley

Title: President

W.O.M. WORLD OF MEDICINE USA, INC.

By: /s/ Robert Buckley

Name: Robert Buckley

Title: President

---

[Third Amendment to Third A&R Credit Agreement]

BANK OF AMERICA, N.A., as  
Administrative Agent

By: /s/ Melissa Mullis  
Name: Melissa Mullis  
Title: Vice President

[Third Amendment to Third A&R Credit Agreement]

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~~NOTE: THIS CONFORMED COPY IS FOR INFORMATIONAL/REFERENCE PURPOSES ONLY.  
PLEASE REFER BACK TO EXECUTED CREDIT AGREEMENT AND ANY AMENDMENTS IN  
ORDER TO DETERMINE LEGAL RIGHTS OF ANY PERSON.~~

Published CUSIP Number: 66989JAA2

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Term: 66989JAC8

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of December 31, 2019

among

Novanta Corporation,

as the Lead Borrower,

the other Borrowers party hereto from time to time,

Novanta Inc.,

as Holdings,

the other Guarantors party hereto from time to time,

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

and

The Other Lenders Party Hereto

BofA SECURITIES, INC., JPMORGAN CHASE BANK, N.A., and  
WELLS FARGO SECURITIES LLC  
as Joint Lead Arrangers

JPMORGAN CHASE BANK, N.A. and  
WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Co-Syndication Agents

SILICON VALLEY BANK, TD BANK, N.A. and BANK OF MONTREAL,  
as Co-Documentation Agents



## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS	2
1.01 Defined Terms	2
1.02 Other Interpretive Provisions	<del>47</del> 49
1.03 Accounting Terms	<del>48</del> 49
1.04 Rounding	<del>49</del>
1.05 Times of Day; Business Days	<del>49</del> 50
1.06 Letter of Credit Amounts	<del>49</del> 50
1.07 Exchange Rates; Currency Equivalents Generally	<del>49</del> 50
1.08 Interest Rates	<del>50</del> 51
1.09 Limited Condition Transactions	<del>50</del> 51
<u>1.10</u> <u>References to Eurocurrency Rate and Eurocurrency Rate Loans.</u>	<u>52</u>
<u>1.11</u> <u>Replacement of Relevant Rate.</u>	<u>52</u>
ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS	<del>51</del> 55
2.01 The Loans	<del>51</del> 55
2.02 Borrowings, Conversions and Continuations of Loans	<del>52</del> 56
2.03 Letters of Credit	<del>54</del> 58
2.04 Swing Line Loans	<del>65</del> 68
2.05 Prepayments	<del>68</del> 71
2.06 Termination or Reduction of Commitments	<del>71</del> 74
2.07 Repayment of Loans	<del>72</del> 75
2.08 Interest	<del>74</del> 77
2.09 Fees	<del>74</del> 77
2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate	<del>75</del> 78
2.11 Evidence of Debt	<del>76</del> 79
2.12 Payments Generally; Administrative Agent's Clawback	<del>76</del> 79
2.13 Sharing of Payments by Lenders	<del>78</del> 81
2.14 Extension of Maturity Date in respect of Term Loans or Revolving Credit Facility	<del>79</del> 82
2.15 Increase in Revolving Credit Facility—	<del>81</del>
	<u>84</u>
2.16 Increase in Term Facility	<del>83</del> 86
2.17 Cash Collateral	<del>85</del> 88
2.18 Defaulting Lenders	<del>86</del> 89
2.19 Designated Lenders	<del>88</del> 91
ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY	<del>88</del> 91
3.01 Taxes	<del>88</del> 91
<del>3.02</del> <del>U.K. Taxes on Payments in respect of the U.K. Facility</del>	<del>100</del>
<u>3.02</u> <u>(I) U.K. Taxes on Payments in respect of the U.K. Facility</u>	<u>96</u>



<u>3.02</u>	<u>(II) German Taxes on Payments in respect of the German Facility</u>	<u>100</u>
3.03	VAT	<del>98</del> <u>105</u>
3.04	Illegality	<del>99</del> <u>104</u>
3.05	Inability to Determine Rates	<del>100</del> <u>105</u>
3.06	Increased Costs	<del>103</del> <u>108</u>
3.07	Compensation for Losses	<del>105</del> <u>110</u>
3.08	Mitigation Obligations; Replacement of Lenders	<del>105</del> <u>110</u>
3.09	Survival	<del>106</del> <u>111</u>
3.10	Designation of Lead Borrower as Borrowers' Agent	<del>106</del> <u>111</u>

#### ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS ~~107~~112

4.01	Conditions of Initial Credit Extension	<del>107</del> <u>112</u>
4.02	Conditions to all Credit Extensions	<del>109</del> <u>117</u>

#### ARTICLE V. REPRESENTATIONS AND WARRANTIES ~~110~~117

5.01	Existence, Qualification and Power	<del>110</del> <u>118</u>
5.02	Authorization; No Contravention	<del>110</del> <u>118</u>
5.03	Governmental Authorization; Other Consents	<del>111</del> <u>118</u>
5.04	Binding Effect	<del>111</del> <u>118</u>
5.05	Financial Statements; No Material Adverse Effect	<del>111</del> <u>119</u>
5.06	Litigation	<del>112</del> <u>120</u>
5.07	No Default	<del>112</del> <u>120</u>
5.08	Ownership of Property; Investments	<del>112</del> <u>120</u>
5.09	Environmental Compliance	<del>113</del> <u>120</u>
5.10	Insurance	<del>114</del> <u>121</u>
5.11	Taxes	<del>114</del> <u>121</u>
5.12	ERISA Compliance	<del>114</del> <u>122</u>
5.13	Subsidiaries; Equity Interests; Loan Parties	<del>116</del> <u>123</u>
5.14	Margin Regulations; Investment Company Act	<del>116</del> <u>124</u>
5.15	Disclosure	<del>117</del> <u>124</u>
5.16	Compliance with Laws	<del>117</del> <u>124</u>
5.17	Intellectual Property; Licenses, Etc.	<del>117</del> <u>124</u>
5.18	Solvency	<del>118</del> <u>125</u>
5.19	[Reserved]	<del>118</del> <u>125</u>
5.20	Labor Matters	<del>118</del> <u>125</u>
5.21	Collateral Documents	<del>118</del> <u>125</u>
5.22	Subordination of Permitted Subordinated Debt	<del>118</del> <u>125</u>
5.23	OFAC	<del>118</del> <u>125</u>
5.24	Anti-Corruption Laws	<del>118</del> <u>126</u>
5.25	Beneficial Ownership Certification	<del>119</del> <u>126</u>
5.26	EEA Financial Institutions	<del>119</del> <u>126</u>
5.27	Covered Entities	<del>119</del> <u>126</u>

ARTICLE VI. AFFIRMATIVE COVENANTS	<del>119</del> <u>126</u>
6.01 Financial Statements	<del>119</del> <u>126</u>
6.02 Certificates; Other Information	<del>120</del> <u>127</u>
6.03 Notices	<del>123</del> <u>130</u>
6.04 Payment of Taxes	<del>124</del> <u>131</u>
6.05 Preservation of Existence, Etc.	<del>124</del> <u>131</u>
6.06 Maintenance of Properties	<del>124</del> <u>131</u>
6.07 Maintenance of Insurance	<del>124</del> <u>131</u>
6.08 Compliance with Laws	<del>125</del> <u>132</u>
6.09 Books and Records	<del>125</del> <u>132</u>
6.10 Inspection Rights	<del>125</del> <u>132</u>
6.11 Use of Proceeds	<del>125</del> <u>132</u>
6.12 Covenant to Guarantee Obligations and Give Security–	<del>126</del> <u>132</u>
6.13 Compliance with Environmental Laws	<del>129</del> <u>135</u>
6.14 Further Assurances	<del>130</del> <u>135</u>
6.15 <del>[Reserved]</del> <u>Post-Closing Obligations</u>	<del>130</del> <u>136</u>
ARTICLE VII. NEGATIVE COVENANTS	<del>130</del> <u>136</u>
7.01 Liens	<del>130</del> <u>136</u>
7.02 Indebtedness	<del>133</del> <u>139</u>
7.03 Investments	<del>137</del> <u>142</u>
7.04 Fundamental Changes	<del>139</del> <u>144</u>
7.05 Dispositions	<del>139</del> <u>145</u>
7.06 Restricted Payments	<del>142</del> <u>147</u>
7.07 Change in Nature of Business	<del>143</del> <u>149</u>
7.08 Transactions with Affiliates	<del>143</del> <u>149</u>
7.09 Use of Proceeds	<del>144</del> <u>149</u>
7.10 Financial Covenants	<del>144</del> <u>150</u>
7.11 Amendments of Organization Documents	<del>144</del> <u>150</u>
7.12 Accounting Changes	<del>145</del> <u>150</u>
7.13 Prepayments, Amendments, Etc. of Permitted Subordinated Indebtedness	<del>145</del> <u>150</u>
7.14 Sanctions	<del>145</del> <u>150</u>
7.15 Anti-Corruption Laws	<del>145</del> <u>151</u>
<del>7.16 Holding Company</del>	<del>145</del>
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES	<del>146</del> <u>151</u>
8.01 Events of Default	<del>146</del> <u>151</u>
8.02 Remedies upon Event of Default	<del>148</del> <u>153</u>
8.03 Application of Funds	<del>149</del> <u>154</u>



ARTICLE IX. ADMINISTRATIVE AGENT	<del>150</del> <u>155</u>
9.01 Appointment and Authority	<del>150</del> <u>155</u>
9.02 Rights as a Lender	<del>151</del> <u>156</u>
9.03 Exculpatory Provisions	<del>151</del> <u>156</u>
9.04 Reliance by Administrative Agent	<del>152</del> <u>158</u>
9.05 Delegation of Duties	<del>153</del> <u>158</u>
9.06 Resignation of Administrative Agent	<del>153</del> <u>158</u>
9.07 Non-Reliance on Administrative Agent and Other Lenders	<del>155</del> <u>160</u>
9.08 No Other Duties, Etc.	<del>156</del> <u>161</u>
9.09 Administrative Agent May File Proofs of Claim	<del>156</del> <u>161</u>
9.10 Collateral and Guaranty Matters	<del>157</del> <u>162</u>
9.11 Secured Cash Management Agreements and Secured Hedge Agreements	<del>158</del> <u>163</u>
9.12 Certain ERISA Matters	<del>158</del> <u>163</u>
ARTICLE X. CONTINUING GUARANTY	<del>160</del> <u>165</u>
10.01 Guaranty	<del>160</del> <u>165</u>
10.02 Rights of Lenders	<del>160</del> <u>165</u>
10.03 Certain Waivers	<del>161</del> <u>166</u>
10.04 Obligations Independent	<del>161</del> <u>166</u>
10.05 Subrogation	<del>161</del> <u>166</u>
10.06 Termination; Reinstatement	<del>162</del> <u>166</u>
10.07 Subordination	<del>162</del> <u>167</u>
10.08 Stay of Acceleration	<del>162</del> <u>167</u>
10.09 Condition of Borrowers	<del>162</del> <u>167</u>
10.10 Rights of Contribution	<del>163</del> <u>167</u>
10.11 Joint and Several Obligations	<del>163</del> <u>168</u>
10.12 Keepwell.	<del>164</del> <u>169</u>
ARTICLE XI. MISCELLANEOUS	<del>164</del> <u>169</u>
11.01 Amendments, Etc.	<del>164</del> <u>169</u>
11.02 Notices; Effectiveness; Electronic Communications	<del>168</del> <u>173</u>
11.03 No Waiver; Cumulative Remedies; Enforcement	<del>170</del> <u>175</u>
11.04 Expenses; Indemnity; Damage Waiver	<del>171</del> <u>176</u>
11.05 Payments Set Aside	<del>173</del> <u>178</u>
11.06 Successors and Assigns	<del>174</del> <u>178</u>
11.07 Treatment of Certain Information; Confidentiality	<del>180</del> <u>185</u>
11.08 Right of Setoff	<del>181</del> <u>186</u>
11.09 Interest Rate Limitation	<del>182</del> <u>187</u>
11.10 Canadian Interest Act	<del>182</del> <u>187</u>
11.11 Counterparts; Integration; Effectiveness	<del>182</del> <u>187</u>
11.12 Survival of Representations and Warranties	<del>183</del> <u>188</u>
11.13 Severability	<del>183</del> <u>188</u>

11.14	Replacement of Lenders	<del>183</del> <u>188</u>
11.15	Governing Law; Jurisdiction; Etc.	<del>184</del> <u>189</u>
11.16	Waiver of Jury Trial	<del>185</del> <u>190</u>
11.17	No Advisory or Fiduciary Responsibility.	<del>185</del> <u>190</u>
11.18	Electronic Execution of Assignments and Certain Other Documents	<del>186</del> <u>191</u>
11.19	USA PATRIOT Act	<del>186</del> <u>191</u>
11.20	Judgment Currency	<del>186</del> <u>192</u>
11.21	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	<del>187</del> <u>192</u>
11.22	Third Amended and Restated Agreement	<del>188</del> <u>193</u>
11.23	[Reserved]	<del>188</del> <u>193</u>
11.24	Acknowledgement Regarding Any Supported QFCs	<del>188</del> <u>193</u>
11.25	German Parallel Debt.	<del>189</del> <u>194</u>
11.26	Administration of German Law Security.	<del>190</del> <u>195</u>

## SIGNATURES

S-1

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[Third Amendment to Third A&R Credit Agreement]

## SCHEDULES

- 1.01 Existing Letters of Credit
- 2.01 Commitments and Applicable Percentages
- 5.05 Supplement to Interim Financial Statements
- 5.08(b) Owned Real Property
- 5.08(c) Leased Real Property (Lessee)
- 5.08(d) Existing Investments
- 5.09 Environmental Matters
- 5.13 Subsidiaries and Other Equity Investments; Loan Parties
- 5.17 Intellectual Property Matters
- 6.12 Guarantors
- 6.15 Post-Closing Obligations
- 7.02 Existing Indebtedness
- 7.05 Certain Properties
- 11.02 Administrative Agent's Office, Certain Addresses for Notices

## EXHIBITS

### *Form of*

- A Committed Loan Notice
- B Swing Line Loan Notice
- C-1 Revolving Credit Note
- C-2 Term Note
- D Compliance Certificate
- E-1 Assignment and Assumption
- E-2 Administrative Questionnaire
- F-1 Guaranty Supplement
- F-2 [Reserved]
- G-1 Security Agreement
- G-2 [Reserved]
- G-3 [Reserved]
- H [Reserved]
- I [Reserved]
- J Foreign Lender Certificate
- K Responsible Officer Certificate
- L Solvency Certificate
- M Notice of Loan Prepayment
- N Permitted Acquisition Certificate

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[Third Amendment to Third A&R Credit Agreement]

### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This THIRD AMENDED AND RESTATED CREDIT AGREEMENT (“Agreement”) is entered into as of December 31, 2019, among NOVANTA CORPORATION, a Michigan corporation (the “Lead Borrower”), NOVANTA UK INVESTMENTS HOLDING LIMITED, a private limited company incorporated in England and Wales (the “U.K. Borrower”), Novanta Europe GmbH, a limited liability company (Gesellschaft mit beschränkter Haftung) formed and existing under the laws of Germany (the “German Borrower” and jointly and severally together with the Lead Borrower, the U.K. Borrower and each other Person to join as a Borrower, collectively the “Borrowers” and each a “Borrower”), NOVANTA INC., a company continued and existing under the laws of the Province of New Brunswick, Canada (“Holdings”), each of the Subsidiaries of Holdings listed under the caption “GUARANTORS” on the signature pages hereto and each Subsidiary of Holdings that becomes a Guarantor after the date hereof pursuant to Section 6.12 (each a “Guarantor” and collectively the “Guarantors”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender, L/C Issuer, BofA SECURITIES, INC., as joint lead arranger, JPMORGAN CHASE BANK, N.A., as joint lead arranger and co-syndication agent, WELLS FARGO SECURITIES LLC, as joint lead arranger, WELLS FARGO BANK, NATIONAL ASSOCIATION, as co-syndication agent, SILICON VALLEY BANK, as co-documentation agent, TD BANK, N.A., as co-documentation agent and BANK OF MONTREAL, as co-documentation agent.

#### PRELIMINARY STATEMENTS:

Prior to the date of this Agreement, the Borrowers and the Guarantors, on the one hand, and Bank of America, N.A., as the Administrative Agent, and the lenders party thereto, on the other hand, entered into that certain Second Amended and Restated Credit Agreement, dated as of May 19, 2016 (as amended pursuant to that certain First Amendment to Second Amended and Restated Credit Agreement dated as of December 22, 2016, that certain Joinder, Assumption and Amendment Agreement dated as of May 30, 2017, that certain Third Amendment to Second Amended and Restated Credit Agreement dated as of August 1, 2017, that certain Fourth Amendment to Second Amended and Restated Credit Agreement dated as of February 26, 2018 and that certain Fifth Amendment to Second Amended and Restated Credit Agreement dated as of November 1, 2019, and as further amended from time to time and in effect immediately prior to the Third Restatement Date (as defined below), the “Existing Credit Agreement”), pursuant to which the lenders party thereto provided the Borrowers and Guarantors with certain financial accommodations.

The Borrowers have requested that the Administrative Agent and the Lenders amend and restate the Existing Credit Agreement to, among other things, increase the Revolving Credit Commitment to \$350,000,000, increase the Term Commitment to the Dollar Equivalent of \$100,000,000, denominated in Euros, to increase the potential aggregate incremental increase of the Revolving Credit Facility and the Term Facility under Sections 2.15 and 2.16 to \$200,000,000, extend the Maturity Date, and effect the other changes set forth in this Credit Agreement, and the Administrative Agent and the Lenders have indicated their willingness to so amend the Existing Credit Agreement and to lend and the L/C Issuer has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

In accordance with Section 11.01 of the Existing Credit Agreement, the Borrowers, the Guarantors, the Lenders and the Administrative Agent desire to amend and restate the Existing Credit Agreement as provided 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:

“2019 Corporate Restructuring Transactions” means, collectively, the following transactions: (i) the creation of Novanta Medical Technologies Corp., a Delaware corporation, which shall be a wholly-owned Subsidiary of the Lead Borrower and shall serve as a holding company, (ii) the transfer of 100% of the shares of WOM World of Medicine USA Inc., a Florida corporation, to Novanta Medical Technologies Corp. on or around December 31, 2019 and (iii) the transfer of 100% of the shares of Laser Quantum Inc., a Delaware corporation, to the Lead Borrower on or around December 31, 2019 and the subsequent liquidation of Laser Quantum Inc. on or around December 31, 2019.

“Act” has the meaning specified in Section 11.19.

“Adjustment” has the meaning specified in Section 3.05(a).

“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, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify ~~to~~ the Lead 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.

“Affiliate” means, with respect to any 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.

“Affiliated Lender” has the meaning specified in Section 11.06(b)(vii).

“Agent Parties” has the meaning specified in Section 11.02(c).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Aggregate Credit Exposures” means, at any time, in respect of (a) the Term Facility, the aggregate amount of the Term Loans outstanding at such time and (b) in respect of the Revolving Credit Facility, the sum of (i) the unused portion of the Revolving Credit Facility at such time and (ii) the Total Revolving Credit Outstandings at such time.

“Agreement” means this Third Amended and Restated Credit Agreement.

“Agreement Currency” has the meaning specified in Section 11.20.

“Alternative Currency” means each of the following currencies: Euros and Sterling.

“Alternative Currency Conforming Changes” means, with respect to the use, administration of or any conventions associated with SONIA or any proposed Alternative Currency Successor Rate for Sterling, any conforming changes to the definitions of “SONIA”, “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 definition of “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, 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 for Sterling (or, if the Administrative Agent 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 for Sterling exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Alternative Currency Daily Rate” means, for any day, with respect to any extension of credit under the Credit Agreement denominated in Sterling, the rate per annum equal to SONIA determined pursuant to the definition thereof plus the SONIA Adjustment; provided, that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

“Alternative Currency Daily Rate Loan” means a Loan that bears interest at a rate based on the definition of “Alternative Currency Daily Rate.” All Alternative Currency Daily Rate Loans must be denominated in Sterling.

“Alternative Currency Loan” means an Alternative Currency Daily Rate Loan or a Loan that bears interest based on the EURIBOR Rate, as applicable.

“Alternative Currency Scheduled Unavailability Date” has the meaning set forth in Section 1.11.

“Alternative Currency Successor Rate” has the meaning set forth in Section 1.11.

“Alternative Extension Transaction” has the meaning specified in Section 2.14(g).

“Ancillary Document Confirmations” means, collectively, the Third Confirmation and Amendment of Ancillary Loan Documents dated as of the Third Restatement Date by and among the Loan Parties and the Administrative Agent and the Canadian Confirmation and Amendment of Ancillary Loan Documents dated as of the Third Restatement Date by and among Holdings and the Administrative Agent.

“Applicable Authority” means, with respect to any Alternative Currency, the applicable administrator for the Relevant Rate for such Alternative Currency or any governmental authority having jurisdiction over the Administrative Agent or such administrator.

“Applicable Fee Rate” means, at any time, in respect of the Revolving Credit Facility, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Fee Rate		
Pricing Level	Consolidated Leverage Ratio	Commitment Fee
1	< 1.0:1.0	0.20%
2	≥ 1.0:1.0 but < 1.5:1.0	0.25%
3	≥ 1.5:1.0 but < 2.0:1.0	0.30%
4	≥ 2.0:1.0 but < 2.5:1.0	0.35%
5	≥ 2.5:1.0	0.40%

Any increase or decrease in the Applicable Fee Rate resulting from a change in the Consolidated 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, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Revolving Lenders, Pricing Level 5 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Fee Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Percentage” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) prior to the Third Restatement Date, such Term Lender’s Term Commitment at such time and (ii) thereafter, the principal amount of such Term Lender’s Term Loans at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time. If the commitment of each Revolving Credit Lender to make Revolving Credit 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 Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender

in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means in respect of the Term Facility and the Revolving Credit Facility, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate			
Pricing Level	Consolidated Leverage Ratio	Eurocurrency Rate and Letters of Credit	Base Rate
1	< 1.0:1.0	1.25 %	0.25 %
2	≥ 1.0:1.0 but < 1.5:1.0	1.50%	0.50%
3	≥ 1.5:1.0 but < 2.0:1.0	1.75%	0.75%
4	≥ 2.0:1.0 but < 2.5:1.0	2.00%	1.00%
5	≥ 2.5:1.0	2.25 %	1.25%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated 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, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Term Lenders or the Required Revolving Lenders, as applicable, Pricing Level 5 shall apply to the applicable Facility 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 date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency, as applicable, as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, (a) with respect to either the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders, (c) with respect to the Swing Line



Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders and (d) with respect to any Incremental Tranche that is a new tranche of Term Loans, or, prior to the funding thereof, any Incremental Tranche that is an increase to an existing tranche of Term Loans or Incremental Revolving Commitment, the Lenders and Eligible Assignees holding commitments of such Incremental Tranche or Incremental Revolving Commitment, as applicable.

“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.

“ARGES Acquisition Agreement” means the Share Purchase Agreement between the German Borrower, Holdings, ARGES GmbH, a company registered with the commercial register at the local court of Amberg under HRB 1748 (“ARGES”), each Seller (as defined therein) and Mr. Markus Guggenmos, of Efeustraße 22, 92421 Schwandorf-Fronberg, Germany, dated as of June 21, 2019.

“Arrangers” means, collectively, BofA Securities, Inc., JPMorgan Chase Bank, N.A. and Wells Fargo Securities LLC in their capacities as joint lead arrangers.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“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 Capitalized 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, (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 Capitalized Lease, and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2018, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Third Restatement Date to the Maturity Date for the Revolving Credit Facility.

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“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 1/2 of 1%, (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) the Eurocurrency Rate 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 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. Base Rate Loans shall only be issued in Dollars and are only available to Borrowers that are not Foreign Borrowers. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.05 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 Revolving Credit Loan or a Term 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.

“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” and “Borrowers” have the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Borrowing, as the context may require.

“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; provided that: (a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day; (b) if

such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a Business Day that is also a TARGET Day; (c) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom, (d) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars, Sterling or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and (de) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars, Sterling or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars, Sterling or Euro, or any other dealings in any currency other than Dollars, Sterling or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Security Agreement” means, collectively, a security agreement and a pledge agreement, each dated as of the Original Closing Date, governed by Canadian law and securing the assets of the Loan Parties organized under Canadian Law, each duly executed by each applicable Loan Party, as the same may be supplemented, modified, amended and/or restated or replaced from time to time.

“Capital Expenditures” means for any period, for Holdings and its Subsidiaries on a consolidated basis, all capital expenditures, as determined in accordance with GAAP. For purposes of this definition, the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment or with insurance proceeds or proceeds from Dispositions shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such insurance proceeds or proceeds from Dispositions, as the case may be. Further, any expenditures that constitute all or a portion of a Permitted Acquisition or other Investment permitted hereunder or are financed with the proceeds of Indebtedness (other than Revolving Credit Loans), shall not be included for purposes of calculating Consolidated Fixed Charge Coverage Ratio.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper in an aggregate amount of no more than \$10,000,000 per issuer outstanding at any time issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of any Borrower or any Subsidiary, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, or the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) with respect to Holdings or any Foreign Subsidiary, any Investment in certificates of deposit or bankers’ acceptances of any bank organized under the laws of Canada, Japan or any country that is a member of the European Economic Community whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof; provided in each case that such Investment matures within one year from the date of acquisition thereof;

(f) repurchase agreements with respect to investments described in the foregoing clause (a) with counterparties that are banks described in the foregoing clause (b); and

(g) investments of the type and maturity described in clauses (a) through (d) above, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that, at the time it enters into a Cash Management Agreement (or, in the case of Cash Management Agreements existing on the Third Restatement Date, on the Third Restatement Date), is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“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 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 or issued.

“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) 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 Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings 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);

(b) except to the extent permitted under Section 7.04, Holdings shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in each Borrower; or

(c) except to the extent permitted under Section 7.04 or Section 7.05, Holdings shall cease to have the power, directly or indirectly, to direct or cause the direction of the management or policies of each Borrower or any Guarantor (other than Holdings), whether through the ability to exercise voting power, by contract or otherwise.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the U.K. Security Agreements, the Canadian Security Agreement, the German Security Agreements, each Intellectual Property Security Agreement (including IP Security Agreement Supplements), the Equity Interest Pledge Agreements, the Mortgages, each of the Security Agreement Supplements, the Ancillary Document Confirmations, any security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents now existing or hereafter entered into by any of the Loan Parties that state that it is a Collateral Document or that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Credit Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurocurrency Rate 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 applicable Borrower or the Lead Borrower, on its behalf or on behalf of any other Borrower.

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

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, for any period, for Holdings and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for any Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income with respect to such period: (i) Consolidated Interest Charges and, to the extent not reflected in such Consolidated Interest Charges, (A) fees, expenses and charges incurred in respect of financing activities (including commissions, discounts and closing fees) during such period and (B) payments made in respect of Swap Contracts permitted hereunder entered into for the purpose of hedging interest rate or currency exchange rate risk during such period; (ii) the provision for federal, state, local and foreign income and other similar taxes for such period, including all taxes reported as “income taxes” on Holding’s consolidated financial statements for such period; (iii) depreciation and amortization expense for such period; (iv) non-recurring expenses (such as consulting, legal, financial, or auditing expenses) in respect of acquisitions (whether or not consummated) in an amount not to exceed \$15,000,000 in the aggregate during any Measurement



Period (“Acquisition Expenses”), (v) other unusual or non-recurring charges, including restructuring charges from ongoing operations or Specified Transactions that are not prohibited hereunder (in each case, whether or not consummated) in any Measurement Period, in an amount not to exceed 25% of Consolidated EBITDA for such period, and (vi) following a Specified Transaction, the amount of run-rate cost savings and synergies (for the avoidance of doubt, synergies shall not include new revenues) projected by the Borrowers from action taken or expected to be taken during the 12-month period following the date of such Specified Transaction, net of the amount of actual benefits theretofore realized during such period from such actions; provided that (1) such amounts are reasonably identifiable, quantifiable and factually supportable in the good faith judgment of the Borrowers, (2) such run-rate cost savings and synergies are directly attributable to such Permitted Acquisition or Specified Transactions, (3) no amounts shall be added pursuant to this clause 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 (4) the aggregate amount of run-rate cost savings and synergies added pursuant to this clause (vi) for any such Measurement Period shall not exceed \$10,000,000; (vii) Non-Cash Charges minus (b) without duplication and to the extent included in determining Consolidated Net Income for such period, (i) non-cash income or gains, all as determined in accordance with GAAP and (ii) earnings from equity method investments less the aggregate amount of cash actually distributed by such Person during such Measurement Period to Holdings or a Subsidiary as dividend or other distribution.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA less (ii) the sum of (x) the aggregate amount of all cash Capital Expenditures plus (y) the aggregate amount of Federal, state, local and foreign income taxes paid in cash (net of cash tax refunds) to (b) the sum of (i) Consolidated Interest Charges paid in cash, (ii) the aggregate scheduled amortization payments under Section 2.07(a) (regardless of whether such scheduled amortization payments had been voluntarily or mandatorily prepaid), for so long as any amounts are outstanding under the Term Loan Facility, (iii) the aggregate principal amount of all other regularly scheduled principal payments or redemptions or similar contractually required acquisitions for value of outstanding debt for borrowed money (including regularly scheduled payments under any Capitalized Leases, except for the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP), but excluding any (x) voluntary repayments and redemptions to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02 and (y) bullet repayment of long-term debt payable at the maturity of such debt, and (iv) the aggregate amount of all Restricted Payments made pursuant to Section 7.06(d) (excluding cashless exercise of options), in each case, of or by Holdings and its Subsidiaries for the most recently completed Measurement Period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for Holdings 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 any Permitted Subordinated Debt) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all Purchase Money Indebtedness, (c) all unpaid reimbursement obligations arising under drawn 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 (i) trade

accounts payable in the ordinary course of business and earn-outs or other similar forms of contingent purchase price; provided that, for the avoidance of doubt, any non-contingent seller debt shall be included in the calculation of Consolidated Funded Indebtedness and (ii) any obligation to pay deferred purchase price in respect of the purchase of shares in ARGES, under the ARGES Acquisition Agreement, in an amount not to exceed 24,800,000 Euros in the aggregate (the “ARGES Deferred Purchase Price”); provided, that if the ARGES Deferred Purchase Price is not paid within ten (10) Business Days after the date it is due, such ARGES Deferred Purchase Price shall be included as Consolidated Funded Indebtedness), (e) all Attributable Indebtedness other than in respect of Capitalized Leases for real property (if capitalization of such leases arises under GAAP), (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than any 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 any Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Borrower or such Subsidiary, in the cases of clauses (a), (b) and (d), to the extent any of such obligations would appear as a liability on the face of a balance sheet of Holdings prepared in accordance with GAAP.

“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 and (b) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a)(i) Consolidated Funded Indebtedness as of such date minus (ii) an amount equal to the lesser of (x) \$25,000,000 and (y) the sum of the amount of (without duplication) (A) unrestricted cash and Cash Equivalents of the Loan Parties as of such date, (B) unrestricted cash and Cash Equivalents of Holdings and its Subsidiaries held at deposit or securities accounts with the Administrative Agent or any Lender as of such date and (C) cash and Cash Equivalents of the Loan Parties held at deposit or securities accounts with the Administrative Agent or any Lender and restricted solely in favor of the Secured Parties as collateral security for the Obligations as of such date, to (b) Consolidated EBITDA of Holdings 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 Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“continuing” and “continuance of” and “existence of” mean, with respect to (a) any Default (other than an Event of Default), that such Default (other than an Event of Default) has not been remedied or waived and (b) any Event of Default, that such Event of Default has not been waived, in each case in accordance with the terms of this Agreement.



“Contractual Obligation” means, as to any Person, 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).

“Covered Party” has the meaning specified in Section 11.24.

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

“CTA” means the United Kingdom Corporation Tax Act 2009.

“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 and affecting the rights of creditors generally.

“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) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“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 2.18(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 in good faith notifies the Administrative Agent and the Borrowers 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 Swing Line 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 Swing Line Loans) within two Business Days of the date when due, (b) has notified the

Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line 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 in good faith 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 Borrowers, to confirm in writing to the Administrative Agent and the Borrowers 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 Borrowers), 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 or a Bail-In Action (or any comparable proceeding initiated by a regulatory authority having jurisdiction over such Lender or such Person), (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 2.17(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 Borrowers, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

"Designated Acquisition" means a Permitted Acquisition with aggregate consideration greater than or equal to \$50,000,000.

"Designated Jurisdiction" means any country, region or territory to the extent that such country, region or territory itself is the subject of any Sanction.

"Designated Lender" shall have the meaning set forth in Section 2.19.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by a Loan Party in connection with a Disposition that is so designated as Designated Non-Cash Consideration pursuant to a certificate of an authorized officer of the Lead Borrower, setting forth the basis of such valuation, executed by either a senior vice president or the principal financial officer of the Lead Borrower, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of, or collection on, or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 7.05.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), 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.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date of the Term Loans at the time such Equity Interest is first issued.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Documentation Agent” means, collectively, Silicon Valley Bank, TD Bank, N.A. and Bank of Montreal in their capacities as co-documentation agents under this Agreement.

“Dollar” and “\$” mean lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency, as the case may be.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Domestic Loan Party” means any Loan Party organized under the laws of the United States of America, 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

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

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992, the Amsterdam Treaty of 1997, the Nice Treaty of 2001 and the Lisbon Treaty of 2007.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment 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), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of 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.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interest Pledge Agreements” means all debentures, share pledge agreements or other similar agreements among any Loan Party and the Administrative Agent, providing for a pledge of the shares of such Loan Party’s Subsidiaries (the “Foreign Pledges”) to the Secured Parties as Collateral for the Obligations, along with any related parallel debt agreements that may be required under the law of the jurisdiction of formation of such Foreign Pledges.

“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, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any 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) a withdrawal by any 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 any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan pursuant to Section 4041(c) of ERISA or the treatment of a Multiemployer Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the commencement of proceedings by the PBGC to terminate a Pension Plan; (f) an 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 considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 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 any Borrower or any ERISA Affiliate; or (i) a failure by any 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 any 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.

“EURIBOR Rate” has the meaning specified in clause (a)(ii) of the definition of Eurocurrency Rate.

“Euro” and “EUR” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Euro Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in Euros as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Euros with Dollars.

“Eurocurrency Rate” means:

- (a) for any Interest Period, with respect to any Credit Extension:
  - (i) denominated in ~~a LIBOR Quoted Currency (other than Euros, in the case of the German Borrower only)~~ Dollars (as long as there is a published LIBOR Rate with respect thereto), the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for the relevant currency and for a period equal in length to the Interest Period for that Loan (“LIBOR”), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the relevant currency, with a term equivalent to such Interest Period;
  - (ii) denominated in Euros ~~and made to the German Borrower~~, the rate per annum equal to the Euro Interbank Offered Rate (“EURIBOR”), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “EURIBOR Rate”) at or about 11:00 a.m. (Brussels, Belgium time) on the Rate Determination Date with a term equivalent to 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 LIBOR, at or about 11:00 a.m., London time determined two London Banking Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day;

provided that if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on the clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Loans denominated in an Alternative Currency or made to a Foreign Borrower must be Eurocurrency Rate Loans.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Subsidiary” means (a) each Foreign Subsidiary (excluding any Foreign Subsidiary which is a Guarantor as of the Third Restatement Date), (b) each Domestic Subsidiary that is not a wholly owned Subsidiary for so long as such Subsidiary is not a wholly owned Subsidiary, (c) each Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary, (d) each Immaterial Subsidiary, (e) each Domestic Subsidiary acquired after the Third Restatement Date to the extent that such Domestic Subsidiary is prohibited by, or unable to obtain a required consent or approval after commercially reasonable efforts to do so under, any applicable contractual obligation (which contractual obligation was in effect prior to the acquisition of such Person and was not entered into in contemplation of such acquisition) or any applicable Laws from guaranteeing the Obligations, (f) each Foreign Subsidiary Holding Company, and (g) any Subsidiary to the extent that a guarantee by the Subsidiary or a pledge of the stock or assets of the



Subsidiary would result in a material adverse tax consequence to any direct or indirect parent of such Subsidiary, as reasonably determined by the Lead Borrower in consultation with the Administrative Agent.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of a Lien to secure, 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 Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.12 and any other “keepwell, support or other agreement for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party, or grant by such Loan Party 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 a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits or similar Taxes, in each case, (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) any United States backup withholding tax, (c) 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 any Borrower under Section 11.14) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), Section 3.01(a)(iii) or Section 3.01(c), (d) amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (e) Taxes attributable to such Recipient’s failure to comply with its obligations under Section 3.01(e) or Section 3.02 and (f) any Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” has the meaning specified in the recitals.

“Existing Letters of Credit” means the letters of credit issued under the Existing Credit Agreement and described in Schedule 1.01.

“Existing Loan Documents” means the Loan Documents (as such term is defined in the Existing Credit Agreement).

“Existing Maturity Date” has the meaning specified in Section 2.14(a).

“Existing Revolving Credit Commitments” means the Revolving Credit Commitments (as such term is defined in the Existing Credit Agreement) of the Existing Revolving Credit Lenders under the Existing Credit Agreement.

“Existing Revolving Credit Lender” means a Revolving Credit Lender (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement.

“Existing Revolving Credit Loans” means the Revolving Credit Loans (as such term is defined in the Existing Credit Agreement) of the Existing Revolving Credit Lenders under the Existing Credit Agreement.

“Existing Term Lender” means a Term Lender (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement.

“Existing Term Loans” means the Term Loans (as such term is defined in the Existing Credit Agreement) of the Existing Term Lenders under the Existing Credit Agreement.

“Extension Amendment” has the meaning specified in Section 2.14(h).

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person out of the proceeds of property or casualty insurance or condemnation awards (and payments in lieu thereof).

“Euro Tranche” means that €116,000,000 tranche which forms part of the Existing Revolving Credit Loans.

“Facility” means the Term Facility or the Revolving Credit Facility, as the context may require.

“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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements entered into in connection with the foregoing and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement and any other similar law, regulation, or exchange of information regime in any jurisdiction.

“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, collectively, (i) the letter agreement, dated as of November 14, 2019, among the Lead Borrower, BofA Securities, Inc. and the Administrative Agent and (ii) the letter agreement, dated as of March 16, 2020, among the Borrowers, BofA Securities, Inc. and the Administrative Agent.



“First Amendment” means the First Amendment to Third Amended and Restated Credit Agreement, dated as of the First Amendment Effective Date, among the Borrowers, the other Loan Parties, the Administrative Agent and the Lenders party thereto.

“First Amendment Effective Date” means March 27, 2020.

“First Restatement Date” means the date of the Existing Credit Agreement, December 27, 2012.

“Foreign Borrower” means any Borrower that is organized under the laws of a jurisdiction other than the United States, a state thereof or the District of Columbia.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 5.12(d).

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which any Borrower is organized or resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Plan” has the meaning specified in Section 5.12(d).

“Foreign Pledgees” has the meaning specified in the definition of Equity Interest Pledge Agreements.

“Foreign Subsidiary” means a Subsidiary that is not a Domestic Subsidiary.

“Foreign Subsidiary Holding Company” means any Subsidiary substantially all of whose assets consist of Equity Interests or, if applicable, intercompany debt, of one or more direct or indirect subsidiaries that are CFCs or other Foreign Subsidiary Holding Companies.

“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 Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“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 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied, subject to Section 1.03(b).

“German Borrower” as defined in the preamble. For the avoidance of doubt, the German Borrower may borrow in Euros, Dollars or Sterling, provided that (i) any Borrowing by the German Borrower in Euros shall be at the EURIBOR Rate and (ii) any Borrowing by the German Borrower in Dollars or Sterling shall be at the LIBOR Rate.

“German Facility” means any Loan to a German Borrower.

“German Lender” means any lenders under a German Facility.

“German Parallel Debt” has the meaning specified in Section 11.25.

“German Qualifying Lender” means a German Lender which is beneficially entitled to interest payable to that Lender in respect of an advance in respect of the German Facility under any Loan Document and is a Lender which is solely tax resident in Germany or a German Treaty Lender.

“German Security Agreements” means, collectively, (i) the Global Security Assignment Agreement of Claims and Receivables dated as of May 30, 2017 between the German Borrower, as Assignor, and the Administrative Agent, as Assignee, (ii) the Security Transfer Agreement of Tangible Assets dated as of May 30, 2017 between the German Borrower, as Transferor, and the Administrative Agent, as Transferee, (iii) the Account Pledge Agreement dated as of May 30, 2017 between the German Borrower, as Pledgor, and the Administrative Agent, as Agent and Pledgee, and the Lenders as Pledgees, (iv) the Share Pledge Agreement dated October 19, 2011 between the Lead Borrower as pledgor and the Administrative Agent as pledgee, as amended pursuant to that certain Share Purchase and Assignment Agreement between Excel Technology Inc. and Novanta UK Investments Holding Limited (f/k/a GSI Group UK Investments Holding Limited) dated July 24, 2015 relating to the shares in Novanta Europe GmbH (f/k/a GSI Group Europe GmbH), (v) the Share Pledge Agreement dated as of June 15, 2016 between the Lead Borrower as pledgor and the Administrative Agent, as pledgee relating to the shares of GSI Group GmbH, (vi) the Share Pledge Agreement dated as of June 15, 2016 between the U.K. Borrower as pledgor and the Administrative Agent as pledgee, relating to the shares of the German Borrower, (vii) the Share Pledge Agreement dated as of June 15, 2016 between the German Borrower as pledgor and the Administrative Agent as pledgee, relating to the shares of Novanta Distribution (USD) GmbH (f/k/a GSI Group Distribution (USD) GmbH), (viii) other security and pledge agreements reasonably requested by the Administrative Agent, securing payment of all the Obligations of the German Borrower under the Loan Documents and constituting Liens on all such properties and (ix) any other existing security agreements governed by German law, in each case, as the same may be supplemented, modified, amended and/or restated or replaced from time to time.

“German Tax Credit” means a credit against, relief or remission for, or repayment of any Tax.

“German Tax Payment” means a payment made by the German Borrower under Section 3.02(II)(b) or Section 3.02(II)(d).

“German Treaty” means a jurisdiction having a double taxation agreement (a “Treaty”) with Germany which makes provision for full exemption from tax imposed by Germany on interest.

“German Treaty Lender” means a German Lender which:

- (a) is treated as a resident of a German Treaty State for purposes of the relevant Treaty; and
- (b) does not carry on a business in Germany through a permanent establishment with which that Lender’s participation in any advance is effectively connected; and
- (c) meets any other conditions in the relevant Treaty which must be fulfilled under the relevant Treaty for residents of that German Treaty State to obtain full exemption from German taxation on interest in relation to payments of interest by the German Borrower at the time of the relevant interest payment, subject to the completion of any necessary procedural formalities.

“German Treaty State” means a jurisdiction having a double taxation agreement (a “Treaty”) with Germany which makes provision for full exemption from tax imposed by Germany on interest.

“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 Obligations” has the meaning set forth in Section 10.01(a).

“Guarantors” means, collectively, Holdings, the Subsidiaries of Holdings listed on Schedule 6.12 and each other Subsidiary of Holdings that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

“Guaranty” means, collectively, the Guaranty made by the Guarantors under Article X in favor of the Secured Parties, together with the Holdings Guaranty and each other guaranty and guaranty supplement, substantially in the form of Exhibit F-1, executed and delivered by a Subsidiary to the Administrative Agent pursuant to Section 6.12.

“Hazardous Materials” means all substances, pollutants or wastes that are defined, listed or regulated under Environmental Law as “hazardous” or “toxic” or “pollutants” (or terms of similar intent or meaning) including, but not limited to, explosive or radioactive substances, petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract permitted under Article VI or VII (or, in the case of Swap Contracts existing on the Third Restatement Date, on the Third Restatement Date), is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“Holdings” has the meaning specified in the introductory paragraph hereto.

“Holdings Guaranty” means the Guaranty made by Holdings, substantially in the form of Exhibit F-2 to the Original Credit Agreement, executed and delivered by Holdings on the Original Closing Date.

“Immaterial Subsidiary” means on any date, any Subsidiary that did not, as of the last day of the fiscal quarter of Holdings most recently ended for which financial statements are available, have, individually or collectively with all other Subsidiaries that are Immaterial Subsidiaries, either (i) assets with a value in excess of 5.0% of total assets of, or (ii) revenues in an amount in excess of 5.0% of the total revenues of, Holdings and its Subsidiaries on a consolidated basis for the period of four consecutive fiscal quarters ended on such day.

“Incremental Revolving Commitment” has the meaning specified in Section 2.15(a).

“Incremental Tranche” has the meaning specified in Section 2.16(a).

“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) the maximum amount of 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 trade accounts payable in the ordinary course of business and earn-outs or other similar forms of contingent purchase price; provided that, for the avoidance of doubt, any non-contingent seller debt shall be considered Indebtedness);
- (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) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, 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 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.

“Indemnified Taxes” means 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, other than Excluded Taxes.

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Initial Revolving Credit Loan” means each Revolving Credit Loan deemed made on the Third Restatement Date pursuant to Section 2.01(b).

“Intellectual Property Security Agreement” means, collectively, each Copyright Security Agreement, each Patent Security Agreement, and each Trademark Security Agreement (as each such term is defined in the Security Agreement), together with each IP Security Agreement Supplement, in each case as amended from time to time.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Eurocurrency Rate 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, Alternative Currency Daily Rate Loan or Swing Line Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, ~~two,~~ three or six months thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Lead Borrower in its Committed Loan Notice or such other period that is twelve months or less requested by the Lead Borrower and consented to by all the Appropriate Lenders; 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 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 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 of the Facility under which such Loan was made.

“Inventory” has the meaning specified in Section 1 of the Security Agreement.

“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 Equity Interests 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 interest in, another 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 or all or a substantial part of the business of, such Person. 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, but

giving effect to any repayments of principal in the case of any Investment in the form of a loan or advance, any reduction in the amount of the relevant Guaranteed Obligations in the case of any Investment in the form of a Guarantee and any return of capital or return on Investment in the case of any equity investment (whether as a distribution, dividend, redemption or sale). If any Borrower or any Subsidiary issues, sells or otherwise disposes of any Equity Interests of a Person that is a Subsidiary (in a Disposition permitted hereunder) such that, after giving effect thereto, such Person is no longer a Subsidiary, any Investment by such Borrower or such Subsidiary in such person remaining after giving effect thereto will not be deemed to be a new Investment at such time.

“IP Rights” has the meaning specified in Section 5.17.

“IP Security Agreement Supplement” any Copyright Security Agreement, Patent Security Agreement or Trademark Security Agreement (as each term is defined in the Security Agreement) executed after the Original Closing Date.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“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 any 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 11.20.

“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 Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage. All L/C Advances shall be denominated in Dollars.

“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 Credit Borrowing. All L/C Borrowings shall be denominated in Dollars.

“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 Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the 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. 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 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“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 Lead 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 or commercial letter of credit issued hereunder and shall include the Existing Letters of Credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“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 Expiration Date” means the day that is seven days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$20,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“LIBOR” has the meaning specified in the definition of Eurocurrency Rate.

~~“LIBOR”~~ ~~“LIBOR-Quoted Currency” means Dollars, Euros and Sterling, in each case as long as there is a published LIBOR rate with respect thereto.~~ Rate” has the meaning specified in clause (a)(i) of the definition of Eurocurrency Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).



“LIBOR Successor Rate” has the meaning specified in Section 3.05(a).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the reasonable discretion of the Administrative Agent in consultation with the Lead Borrower, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as is reasonably necessary in connection with the administration of this Agreement at the reasonable discretion of the Administrative Agent in consultation with the Lead Borrower).

“Limited Condition Transaction” has the meaning specified in Section 1.09.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, 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 Borrowers under Article II in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty (including the Holdings Guaranty), (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document; (g) the First Amendment, (h) after execution and delivery thereof, the Deed of Confirmation of Security entered into by Holdings, the U.K. Borrower, Novanta Technologies UK Limited and the Administrative Agent dated on or around the First Amendment Effective Date, and (i) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.17 of this Agreement.

“Loan Parties” means, collectively, each Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent and the Lenders, taken as a whole, under any Loan Document, or of the ability of the Loan Parties, taken as a whole, to perform their obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties of the Loan Documents.

“Material Properties” means any real property owned by a Loan Party in fee and acquired after the Third Restatement Date with a fair market value as of the date of acquisition thereof (or, if later, as of the date the relevant owner thereof becomes a Loan Party) in excess of \$20,000,000 and designated by the Administrative Agent as a “Material Property.”

“Maturity Date” means the earliest of (a) with respect to the Revolving Credit Facility, the earliest of (x) December 31, 2024 (or the previous Business Day if December 31, 2024 is not a Business Day) (or, if maturity is extended pursuant to Section 2.14, such extended maturity date as determined pursuant to such Section), (y) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, and (z) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02 and (b) with respect to the Term Facility, the earliest of (x) December 31, 2024 (or the previous Business Day if December 31, 2024 is not a Business Day) (or, if maturity is extended pursuant to Section 2.14, such extended maturity date as determined pursuant to such Section), (y) the date of prepayment of the Term Loans in full in cash pursuant to Section 2.05, and (z) the date of acceleration of the Loans pursuant to Section 8.02; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning specified in Section 11.09.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of Holdings.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means, collectively, each deed of trust, trust deed, deed to secure debt, or mortgage, executed by a Loan Party in favor of the Agent and covering the Material Properties, as the same may be amended, modified and/or replaced from time to time.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any 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 a Plan which has two or more contributing sponsors (including any 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.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in

connection with such transaction (other than Indebtedness under the Loan Documents), (B) the out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction, (C) income or gains taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds (D) taxes imposed on the distribution or repatriation of any such Net Cash Proceeds and (E) in the case of any Disposition, amounts required to be provided as a reserve, in accordance with GAAP, against any liabilities (contingent or otherwise) associated with such Disposition (including reserves required for indemnities); provided, that, immediately upon release of such reserve to any Loan Party or Subsidiary thereof, the amount released shall be considered Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith.

“Non-Cash Charges” means (a) any impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities pursuant to GAAP, (b) all losses from Investments recorded using the equity method, (c) the non-cash impact of acquisition method accounting, (d) non-cash losses attributable to the mark to market movement in the valuation of hedging obligations (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Accounting Standards Codification No. 815—Derivatives and Hedging, (e) non-cash losses from Dispositions for such period and (f) other non-cash charges, expenses or charges, including expenses and costs that result from stock based awards, partnership interest based awards and similar incentive based awards or arrangements.

“Non-Converting Euro Tranche” means that part of the Euro Tranche which is not converting to and becoming a Term Loan pursuant to Section 2.01(a)(i).

“Non-Extending Lender” has the meaning specified in Section 2.14(b).

“Non-Finance Lease” means any lease that is not required to be accounted for as a financing or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. For the avoidance of doubt, an operating lease (including any lease that would not have been a capital lease under GAAP as of December 31, 2017) shall be considered a Non-Finance Lease.

“Note” means a Term Note or a Revolving Credit Note, as the context may require.

“Notice Date” has the meaning specified in Section 2.14(b).

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit M 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.

“Not Otherwise Applied” means, with reference to any amount of net cash proceeds of any issuance or sales of any Borrower’s or Holdings’ Equity Interests or contributions to any Borrower’s or Holdings’ capital, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) contingent on receipt of such amount or utilization of such amount for a specified purpose. The Lead Borrower shall promptly notify the Administrative Agent of any application of such amount as contemplated above.

“NPL” means the National Priorities List under CERCLA.

“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, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, 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 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 Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“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 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 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.

“Original Closing Date” means the closing date of the Original Credit Agreement, October 19, 2011.

“Original Credit Agreement” means that certain Credit Agreement, dated as of October 19, 2011, as amended, among the Lead Borrower, Holdings, certain Guarantors, Bank of America, N.A., as administrative agent and the lenders party thereto from time to time.

“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 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 Documents).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, property or any other similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.14).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such 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 Borrowers of Unreimbursed Amounts.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“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, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 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 any Borrower and any ERISA Affiliate or with respect to which any Borrower or any ERISA Affiliate has any liability under ERISA and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code, other than a Multiemployer Plan.

“Permitted Acquisition” has the meaning specified in Section 7.03(j).

“Permitted Subordinated Debt” means unsecured Indebtedness of Holdings or any of its Subsidiaries; provided that

(a) there shall be no scheduled payments of principal in respect of such Indebtedness prior to 91 days after the Maturity Date, as of the date such Indebtedness is initially incurred,

(b) the final maturity of such Indebtedness shall not be earlier than 91 days after the Maturity Date, and

(c) such Indebtedness shall be subordinated in right of payment to the Obligations, and have payment blockage and standstill provisions with respect to exercise of remedies on terms that are reasonably acceptable to the Administrative Agent at the time of issuance thereof.

“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 for employees of any Borrower or any ERISA Affiliate or any such Plan to which any Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in Section 5(i) of the Security Agreement.

“Pledged Interests” has the meaning specified in Section 1 of the Security Agreement.

“Pro Forma Basis” and “Pro Forma Effect” means, for any Specified Transaction, whether actual or proposed, for purposes of determining compliance with the financial covenants set forth in Section 7.10, each such transaction or proposed transaction 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 or similar Specified Transaction, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition or similar Specified Transaction shall be excluded from the results of Holdings and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition or similar Specified Transaction, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition or similar Specified Transaction shall be included in the results of Holdings 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 connection with a Disposition or similar Specified Transaction shall be excluded from the results of Holdings and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness (including any Credit Extension) actually or proposed to be incurred or assumed in connection with a Specified Transaction under Section 7.06(h) 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 Holdings and its Subsidiaries for such Measurement Period.

“Pro Forma Compliance” means, with respect to any transaction, that such transaction does not cause, create or result in a Default 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.

“Purchase Money Indebtedness” means Indebtedness of any Person incurred for the purpose of financing all or any part of the purchase price or cost of acquisition, repair, construction or improvement of property or assets used or useful in the business of such Person.

“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 11.24.

“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.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent.

“Receivables” means “Accounts” as defined in Section 1 of the Security Agreement.

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reduction Amount” has the meaning specified in Section 2.05(b)(viii).

“Refinanced Term Loans” has the meaning specified in Section 11.01.

“Register” has the meaning specified in Section 11.06(c).

“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.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

“Relevant Rate” means, with respect to any Loan denominated in Sterling, SONIA and with respect to any Loan denominated in Euros, the EURIBOR Rate.

“Replacement Term Loans” has the meaning specified in Section 11.01.

“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 Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, subject to Section 1.11, as of any date of determination, (a) if there is only one Lender that is not a Defaulting Lender, such Lender and (b) otherwise, two or more Lenders that are not Defaulting Lenders holding more than 50% of the sum of the (i) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (ii) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders and provided, further that a Lender and its Affiliates shall be deemed one Lender for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means, as of any date of determination, (a) if there is only one Revolving Credit Lender that is not a Defaulting Lender, such Revolving Credit Lender and (b) otherwise, two or more Revolving Credit Lenders that are not Defaulting Lenders holding more



than 50% of the sum of the (i) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Revolving Credit Lender for purposes of this definition) and (ii) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders, provided, further that a Lender and its Affiliates shall be deemed one Lender for purposes of making a determination of Required Revolving Lenders.

"Required Term Lenders" means, as of any date of determination, (a) if there is only one Term Lender that is not a Defaulting Lender, such Term Lender and (b) otherwise, two or more Term Lenders holding more than 50% of the Term Facility on such date; provided that the portion of the Term Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term Lenders and provided, further that a Lender and its Affiliates shall be deemed one Lender for purposes of making a determination of Required Term Lenders.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of such Loan Party and, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party (or other senior executive officer or director performing similar functions), and, solely for purposes of notices given pursuant to Article II, any other officer or employee (or other senior executive officer or director performing similar functions) 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. To the extent required by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

"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 any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Revaluation Date" means with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan or Alternative Currency Daily Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02 and each Interest Payment

Date with respect to an Alternative Currency Daily Rate Loan, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) 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 determine or the Required Lenders shall require.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line 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 2.01 under the caption “Revolving Credit Commitment” or opposite such caption 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.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b).

“Revolving Credit Note” means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-1.

“Revolving Increase Joinder” has the meaning specified in Section 2.15(e).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“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 3.05(b)(ii).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” means the second amended and restated security agreement executed as of the Third Restatement Date, in substantially the form of Exhibit G-1 to the Agreement (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended).

“Security Agreement Supplement” means a “Joinder” under and as defined in the Security Agreement.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“SOFR-Based Rate” means SOFR or Term SOFR.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person and its Subsidiaries on a consolidated basis is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries on a consolidated basis, (b) the present fair salable value of the assets of such Person and its Subsidiaries on a consolidated basis is not less than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as they become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis do not intend to, and do not believe that they will, incur debts or liabilities beyond the ability of such Person and its Subsidiaries on a consolidated basis to pay such debts and liabilities as they become absolute and matured, (d) such Person and its Subsidiaries on a consolidated basis are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which such Person and its Subsidiaries on a consolidated basis’s property would constitute an unreasonably small capital, and (e) such Person and its Subsidiaries on a consolidated basis are able to pay their debts and liabilities, contingent obligations and other commitments as they become absolute and matured in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SONIA” means, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth Business Day preceding such date 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); provided however that if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

“SONIA Adjustment” means, with respect to SONIA, 0.1193% per annum.

“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 10.12).

“Specified Transaction” means any cost savings initiative, business optimization initiative, acquisition, equity issuance, incurrence of indebtedness, investment, divestiture, discontinued operation or disposition.

“Spot Rate” for any currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” or “£” means the lawful currency of the United Kingdom.

“Sterling Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in Sterling as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Sterling with Dollars.

“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 securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are 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 Holdings.

“Supported QFC” has the meaning specified in Section 11.24.

“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 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).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line 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 Lead Borrower.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Syndication Agent” means, collectively, JPMorgan Chase Bank, N.A. and Wells Fargo Bank, National Association in their capacities as co-syndication agents under this Agreement.

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“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 (including sale and leaseback transactions), in each case, 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); provided that the amount of any obligation in respect of any sale-leaseback transaction shall be the present value, discounted in accordance with GAAP (as in effect on the date hereof) at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor be extended).

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Tax Deduction” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a deduction or withholding from a payment required by FATCA.

“Tax Confirmation” means a confirmation by a U.K. Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance in respect of the U.K. Facility under a Loan Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
- (b) a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.



“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(b).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrowers pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term Facility” means, at any time, (a) on or prior to the Third Restatement Date, the aggregate amount of the Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Increase Joinder” has the meaning specified in Section 2.16(e).

“Term Lender” means at any time, (a) on or prior to the Third Restatement Date, any Lender that has a Term Commitment at such time and (b) at any time after the Third Restatement Date, any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

“Term Note” means a promissory note made by the Borrowers in favor of a Term Lender, evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C-2.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Third Amendment Effective Date” means September 29, 2021.

“Third Restatement Date” means the first date all the conditions precedent in Sections 4.01 and 4.02 are satisfied or waived in accordance with Section 11.01.

“Threshold Amount” means \$7,500,000.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Transaction” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party, (b) the refinancing of certain outstanding Indebtedness of the Borrowers and their Subsidiaries and the termination of all commitments with respect thereto, and (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.





“Treaty” as defined in the definition of “U.K. Treaty State” or in the definition of “German Treaty State”, as applicable.

“Type” means, with respect to a Loan, its character as a Base Rate Loan ~~or~~ a Eurocurrency Rate Loan or an Alternative Currency Daily Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“U.K. Bail-In Legislation” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

“U.K. Borrower” as defined in the preamble.

“U.K. Facility” means any Loan to a U.K. Borrower.

“U.K. Lenders” means lenders under a U.K. Facility.

“U.K. Non-Bank Lender” means

(i) a U.K. Lender that falls within paragraph (a)(ii) of the definition of “U.K. Qualifying Lender” that is a party to this Agreement on the date of this Agreement (and has given a Tax Confirmation by entering into this Agreement on such date, pursuant to **Section 5.8.6(b)(x)**); and

(ii) a U.K. Lender which becomes a Lender after the date of this Agreement that gives a Tax Confirmation in the Assignment and Assumption which it executes on becoming a U.K. Lender.

“U.K. Qualifying Lender” means (a) a U.K. Lender which is beneficially entitled to interest payable to that Lender in respect of an advance in respect of the U.K. Facility under any Loan Document and is:

(i) a Lender:

(A) that is a bank (as defined for the purpose of section 879 of the ITA) making an advance in respect of the U.K. Facility; or

(B) in respect of an advance by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that such advance was made,

and, in each case, which is (or, for the purposes of (B), was) within the charge to United Kingdom corporation tax with respect to any payments of interest made in respect of that advance (or, for the purposes of paragraph (A), above, would be within such charge as respects such payments apart from section 18A of the CTA); or

- (ii) a Lender which is:
  - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (B) a partnership, each member of which is (x) a company so resident in the United Kingdom; or (y) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
  - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
  - (D) a U.K. Treaty Lender; or
  - (b) a building society (as defined for that purposes of section 880 of the ITA) making an advance in respect of the U.K. Facility.

“U.K. Treaty Lender” means a U.K. Lender which:

- (a) is treated as a resident of a U.K. Treaty State for purposes of the relevant Treaty; and
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in any advance is effectively connected; and
- (c) meets any other conditions in the relevant Treaty which must be fulfilled under the relevant Treaty for residents of that U.K. Treaty State to obtain full exemption from United Kingdom taxation on interest in relation to payments of interest by the U.K. Borrower at the time of the relevant interest payment, subject to the completion of any necessary procedural formalities.

“U.K. Security Agreements” means, collectively, (i) the security agreement dated as of the Original Closing Date and governed by English law securing the assets of Novanta Inc. (previously known as GSI Group Inc.) and Novanta Technologies UK Limited (previously known as GSI Group Limited) organized under English Law, as chargors and Bank of America, N.A., as Administrative Agent, and (ii) the security agreement dated as of July 8, 2015 by and among

Novanta Inc. (previously known as GSI Group Inc.) and Novanta UK Investments Holding Limited (previously known as GSI Group UK Investments Holding Limited), as chargors and Bank of America, N.A., as Administrative Agent, (iii) other security and pledge agreements reasonably requested by the Administrative Agent, securing payment of all the Obligations of the U.K. Borrower under the Loan Documents and constituting Liens on all such properties and (iv) any other existing security agreements governed by English law, in each case, as the same may be supplemented, modified, amended and/or restated or replaced from time to time.

“U.K. Treaty State” means a jurisdiction having a double taxation agreement (a “Treaty”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“U.S. Loan Party” means any Loan Party that is organized under the laws of one of the states of the United States of America and that is not a CFC.

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.24.

“VAT” means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“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) in relation to any U.K. Bail-In Legislation:

(i) any powers under that U.K. Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person 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 U.K. Bail-In Legislation that are related to or ancillary to any of those powers; and

(ii) any similar or analogous powers under that U.K. Bail-In Legislation.

## 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 “herein,” “hereof,” “hereto” 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, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, 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 or regulation shall, unless otherwise specified, refer to such law 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 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, in the case of any reference to a merger, consolidation or amalgamation, to an unwinding of such a division or allocation), as if it were a sale, disposition or transfer (or merger, consolidation or amalgamation 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 Borrowers and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 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 Lead Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers 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, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers 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 on the Third Restatement Date in the Audited Financial Statements for all purposes of this Agreement (including, without limitation, for purposes of calculating “Attributable Indebtedness”), 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 (it being understood, for the avoidance of doubt, that until any such amendment is entered into, no Non-Finance Lease shall constitute a Capitalized Lease for purposes of this Agreement).

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of Holdings and its Subsidiaries or to the determination of any amount for Holdings and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Holdings is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.

### 1.04 Rounding

Any financial ratios required to be maintained by the Borrowers 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; Business Days

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or required on a day which is not a Business Day, the date of such payment (other than as expressly set forth herein) or performance shall extend to the immediately succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

## 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, however, 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 Exchange Rates; Currency Equivalents Generally

(a) Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate for the purchase of such currency with Dollars.

(b) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants or negative covenant “baskets” 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.

(c) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or 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 Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the Euro Equivalent or Sterling Equivalent, as the case may be, of such Dollar amount (rounded to the nearest Euro or £, 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.



## 1.08 Interest Rates

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 the rates in the definition of “Eurocurrency Rate” or “Alternative Currency Daily Rate” 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 of such rate (including, without limitation, any LIBOR Successor Rate or Alternative Currency Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes or Alternative Currency Conforming Changes.

## 1.09 Limited Condition Transactions

For purposes of determining pro forma compliance with the Consolidated Leverage Ratio and Consolidated Fixed Charge Coverage Ratio or any other basket based on Consolidated EBITDA, or whether a Default or an Event of Default has occurred and is continuing (including in the case of the funding of an Incremental Tranche, but excluding in the case of the funding of an Incremental Revolving Commitment), in connection with the consummation of any acquisition or investment not prohibited hereunder that a Loan Party or a Subsidiary is contractually committed to consummate (it being understood that such commitment may be subject to conditions precedent, which conditions precedent may be amended or waived in accordance with the terms of the applicable agreement, so long as after giving effect thereto, such acquisition or investment would not be prohibited under the Loan Documents) and whose consummation is not conditioned on the availability of, or on obtaining, third party financing (or which cannot be terminated by such Loan Party or such Subsidiary without incurrence of a material payment or fee (any such acquisition or investment, a “Limited Condition Transaction”), the date of determination shall, at the option of the Lead Borrower, be the date the definitive agreements for such Limited Condition Transaction are entered into (the “LCT Test Date”), and such determination shall be made on the basis of financial information available as of the LCT Test Date and if, immediately after giving pro forma effect to such Limited Condition Transaction and the other transactions related thereto to be entered into in connection therewith (including any incurrence of indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable test period ending on the LCT Test Date, such Loan Party could have consummated such Limited Condition Transaction and such other transactions on the relevant LCT Test Date in compliance with such ratio, test or basket, then such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if any of such ratios or amounts are exceeded as a result of fluctuations in such ratio or amount (including due to fluctuations in Consolidated EBITDA of the Borrowers or the person subject to such Limited Condition Transaction), at or prior to the consummation of the relevant transaction or action, such ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken; provided that if a Borrower makes such election, then in connection with any calculation of any ratio, test or basket availability with respect to any transaction following the relevant LCT Test Date and prior to the earliest of the date on which such Limited Condition Transaction is consummated, the 120th day following the signing of the definitive agreement for such Limited Condition Transaction and the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining

whether such subsequent transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of indebtedness and the use of proceeds thereof) have been consummated.

#### 1.10 References to Eurocurrency Rate and Eurocurrency Rate Loans.

(a) References to the Eurocurrency Rate and Eurocurrency Rate Loans in this Agreement and the other Loan Documents that are not specifically addressed in Sections 1.10 or 1.11 or elsewhere in this Agreement (other than the definitions of Base Rate, Base Rate Loan, Eurocurrency Rate and Eurocurrency Rate Loan) shall be deemed to include Alternative Currency Daily Rates and Alternative Currency Daily Rate Loans, as applicable.

(b) On and after the Third Amendment Effective Date, any request for a new Loan denominated in an Alternative Currency or to continue or convert an existing Loan denominated in an Alternative Currency, shall be deemed to be a request for a new Loan bearing interest at (x) in the case of Sterling, the Alternative Currency Daily Rate or (y) in the case of Euros, the Eurocurrency Rate; provided, that, to the extent any Loan bearing interest at the Eurocurrency Rate is outstanding on the Third Amendment Effective Date, such Loan shall continue to bear interest at the Eurocurrency Rate until the end of the current Interest Period or payment period applicable to such Loan unless, in the case of a Loan that bears interest at a daily floating rate, such daily floating rate is no longer representative or being made available, in which case such Loan shall bear interest at the Eurocurrency Rate or the Alternative Currency Daily Rate immediately upon the Third Amendment Effective Date.

#### 1.11 Replacement of Relevant Rate.

(a) Required Lenders. For purposes of this Section 1.11, those Lenders that either have not made, or do not have an obligation under the Credit Agreement to make, the relevant Loans in the relevant Alternative Currency shall be excluded from any determination of Required Lenders.

(b) Inability to Determine Rates. Notwithstanding Section 3.05 of the Credit Agreement, if in connection with any request for an Alternative Currency Loan or a continuation of any of such Loans, as applicable, (A) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (x) no Alternative Currency Successor Rate for the Relevant Rate for the applicable Alternative Currency has been determined in accordance with Section 1.11(c) and the circumstances under clause (A) of Section 1.11(c) or the Alternative Currency Scheduled Unavailability Date has occurred with respect to such Relevant Rate (as applicable), or (y) adequate and reasonable means do not otherwise exist for determining the Relevant Rate for the applicable Alternative Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Alternative Currency Loan, or (B) the Administrative Agent or the Required Lenders determine that the Relevant Rate with respect to a proposed Alternative Currency Loan for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders (as certified by such Lenders, which certification shall be conclusive absent manifest error) of funding such Loan, the Administrative Agent will promptly so notify the Lead Borrower and



each Lender. Thereafter, the obligation of the Lenders to make or maintain Loans in the affected Alternative Currencies, as applicable, shall be suspended in each case to the extent of the affected Alternative Currency Loans or Interest Period or determination date(s), as applicable, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (B) of this paragraph, until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (A) the Lead Borrower (on behalf of the Borrowers) may revoke any pending request for a Borrowing of, conversion to, or continuation of Alternative Currency Loans to the extent of the affected Alternative Currency Loans or Interest Period or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount specified therein and (B) any outstanding affected Alternative Currency Loans, at the Lead Borrower's election, shall either (1) be converted into a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Alternative Currency Loan immediately, in the case of an Alternative Currency Daily Rate Loan or at the end of the applicable Interest Period, in the case of an affected Eurocurrency Loan in an Alternative Currency or (2) be prepaid in full immediately, in the case of an Alternative Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of an affected Eurocurrency Loan in an Alternative Currency; provided that if no election is made by the Lead Borrower (x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Lead Borrower of such notice or (y) in the case of an affected Eurocurrency Loan in an Alternative Currency, by the last day of the current Interest Period for the applicable affected Eurocurrency Loan in an Alternative Currency, the Lead Borrower shall be deemed to have elected clause (1) above.

(c) **Replacement of Relevant Rate or Alternative Currency Successor Rate.** Notwithstanding anything to the contrary in this Agreement, the Credit Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(i) **adequate and reasonable means do not exist for ascertaining the Relevant Rate for an Alternative Currency because none of the tenors of such Relevant Rate (including any forward-looking term rate thereof) is available or published on a current basis and such circumstances are unlikely to be temporary; or**

(ii) **the Applicable Authority has made a public statement identifying a specific date after which all tenors of the Relevant Rate for an Alternative Currency (including any forward-looking term rate thereof) shall or will no longer be representative or made available, or used for determining the interest rate of loans denominated in such Alternative Currency, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate for such Alternative Currency (the latest date on which all tenors of the Relevant Rate for such Alternative Currency (including any forward-looking term rate thereof) are no longer**

representative or available permanently or indefinitely, the “Alternative Currency Scheduled Unavailability Date”); or

(iii) syndicated loans currently being executed and agented in the United States, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Alternative Currency;

or if the events or circumstances of the type described in Section 1.11(c)(i), (ii) or (iii) have occurred with respect to the Alternative Currency Successor Rate then in effect, then, the Administrative Agent and the Lead Borrower may amend this Agreement or any other Loan Document solely for the purpose of replacing the Relevant Rate for such Alternative Currency or any then current Alternative Currency Successor Rate for such Alternative Currency in accordance with this Section 1.11(c) with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Alternative Currency for such alternative benchmarks, 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 credit facilities syndicated and agented in the United States and denominated in such Alternative Currency for such benchmarks, 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 (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “Alternative Currency Successor Rate”), and 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 Lead 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.

(d) The Administrative Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of the implementation of any Alternative Currency Successor Rate.

(e) Any Alternative Currency 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 Alternative Currency Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Lead Borrower.

(f) Notwithstanding anything else herein or in the Credit Agreement, if at any time any Alternative Currency Successor Rate as so determined would otherwise be less than zero percent, the Alternative Currency Successor Rate will be deemed to be zero percent for the purposes of this Agreement and the other Loan Documents.

(g) In connection with the implementation of a Alternative Currency Successor Rate, the Administrative Agent will have the right to make Alternative Currency Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Alternative Currency 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 Alternative Currency Conforming Changes to the Lead Borrower and the Lenders reasonably promptly after such amendment becomes effective.

## ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01      The Loans

#### (a)      The Term Borrowing.

(i)          On the Third Restatement Date, an amount equal to the Euro equivalent of \$100,000,000 of the Euro Tranche of the Existing Revolving Credit Loans will be converted to and become the Term Loan referenced in Section 2.01(a)(ii) with no change to the existing Interest Periods applicable thereto prior to such conversion, and the accrued but unpaid interest thereon prior to the Third Restatement Date shall be paid to the Administrative Agent on the Third Restatement Date.

(ii)        Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrowers on the Third Restatement Date in an amount equal to (but not to exceed) such Term Lender's Term Commitment. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Term Commitments. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans shall be Eurocurrency Rate Loans as further provided herein. The Term Loans shall be funded in Euros.

(iii)       In connection with the foregoing, each Existing Term Lender and each Existing Revolving Lender shall return any notes issued to such Lender to the Administrative Agent for cancellation. The Administrative Agent shall promptly return such notes to the Borrowers once cancelled.

#### (b)      The Revolving Credit Borrowings.

(i)          On the Third Restatement Date, (A) the full outstanding principal balance of Existing Term Loans will be converted to and become part of the Revolving Credit Loans referenced in Section 2.01(b)(ii) with no change to the existing Interest Periods applicable thereto prior to such conversion and the accrued but unpaid interest thereon prior to the Third Restatement Date shall be paid to the Administrative Agent on the Third Restatement Date, and (B) any remaining Existing Revolving Credit Loans, after the conversion referenced in Section 2.01(a)(i) has been completed, shall be deemed to be Revolving Credit Loans referenced in Section 2.01(b)(ii) with no change to the existing Interest Periods applicable thereto prior to such deemed making of Revolving Credit Loans, and in respect of the Non-Converting Euro Tranche only, accrued but unpaid interest thereon prior to the Third Restatement Date shall be paid to the Administrative Agent on the Third Restatement Date.

(ii) Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrowers 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 Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Revolving Credit Lender’s Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender’s Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender’s Revolving Credit Commitment. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

## 2.02 Borrowings, Conversions and Continuations of Loans

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon irrevocable notice by the applicable Borrower or the Lead Borrower on its behalf or on behalf of any other Borrower to the Administrative Agent, which may be given by: (A) telephone or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (or such later time on such date acceptable to the Administrative Agent) (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars or of any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, (ii) ~~four~~three (43) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, ~~and~~-(iii) on the requested date of any Borrowing of Base Rate Loans and (iv) three (3) Business Days prior to the requested date of any Borrowing of Alternative Currency Daily Rate Loans; provided, however, that if the Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one (1), ~~two (2)~~, three (3) or six (6) months in duration as provided in the definition of “Interest Period”, the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. (or such later time on such date acceptable to the Administrative Agent) (i) four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, or (ii) five (5) Business Days prior to the requested date of such ~~Borrower~~Borrowing, conversion or continuation of Eurocurrency Rate Loans or Alternative Currency Daily Rate Loans denominated in Alternative Currencies, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them; provided further, that any notice in respect of the Borrowers to occur on the Third Restatement Date may be given on the Business Day prior to the Third Restatement Date. Not later than 11:00 a.m., (i) three (3) Business Days before the requested date of such Borrowing, conversion or continuation of

Eurocurrency Rate Loans denominated in Dollars, or (ii) four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency [Rate Loans or Alternative Currency Daily](#) Rate Loans denominated in Alternative Currencies, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders, to the extent such consent is required. Each telephonic notice by the Lead Borrower pursuant to this [Section 2.02\(a\)](#) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the applicable Borrower or the Lead Borrower on its behalf or on behalf of any other Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency [Rate Loans or Alternative Currency Daily](#) Rate Loans shall be in a principal amount of the Dollar Equivalent of \$500,000 or a whole multiple of the Dollar Equivalent of \$100,000 in excess thereof. Except as provided in [Sections 2.03\(c\)](#) and [2.04\(c\)](#), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of the Dollar Equivalent of \$500,000 or a whole multiple of the Dollar Equivalent of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrowers are requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurocurrency Rate 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 Term Loans or Revolving Credit Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto, and (vi) the currency of the Loans to be Borrowed. If the Borrowers fail to specify a Type of Loan in a Committed Loan Notice or fail to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans [denominated in Dollars](#); provided, however, that in the case of a failure to timely request a continuation of [Eurocurrency](#) Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one (1) month. 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 Eurocurrency Rate Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fail to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurocurrency Rate Loan. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid in the original currency of such Loan and reborrowed in the other currency. For the avoidance of doubt, any communications with the German Borrower shall be made via electronic mail. [Notwithstanding anything herein, an Alternative Currency Loan which is an Alternative Currency Daily Rate Loan may be continued or converted at any time.](#)

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount (and currency) of its Applicable Percentage under the Term Facility or Revolving Credit Facility, as the case may be, and if no timely notice of a conversion or continuation is provided by the applicable Borrower or the Lead Borrower on its behalf or on behalf of any other Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans denominated in a currency other than Dollars, in each case as described in [Section 2.02\(a\)](#). In

the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed 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 Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers 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 applicable Borrower or the Lead Borrower on its behalf or on behalf of any other Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing denominated in Dollars is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the continuance of an Event of Default, or the written election of the Required Lenders, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than six (6) Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than six (6) Interest Periods in effect in respect of the Revolving Credit Facility.

## 2.03 Letters of Credit

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Third Restatement Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrowers or their Subsidiaries that are Guarantors, and to amend or extend Letters of



Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrowers or their Subsidiaries that are Guarantors and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrowers for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Third Restatement Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

(iii) 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 such 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 such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such 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 Third Restatement Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Third Restatement 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, such Letter of Credit is in an initial stated amount less than \$500,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(F) 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 Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.18(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

(G) the L/C Issuer does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) 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 such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving Credit 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.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrowers delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed



by a Responsible Officer of the applicable Borrower or the Lead Borrower on its behalf or on behalf of any other Borrower. Such Letter of Credit Application may be sent by facsimile, United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.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. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof and in the absence of specification of currency shall be deemed a request for a Letter of Credit denominated in Dollars; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the Borrowers shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) If the Borrowers so request in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that

has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrowers shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) If the Borrowers so request in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Borrowers shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such reinstatement or (B) from the Administrative Agent, any Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Lead Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrowers shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Lead Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the Borrowers will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Lead Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination. Not later than 11:00 a.m. (or such later time on such date acceptable to the L/C Issuer) on the Business Day following the later of (x) the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency and (y) the date the Lead Borrower is notified of such payment (each such date, an “Honor Date”), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Revolving Credit Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) 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.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(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 L/C Issuer, any 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, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Committed Loan Notice ). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit 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(c) by the time specified in Section 2.03(c)(ii), 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 applicable Overnight Rate from time to time in effect 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 Loan included in the relevant 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 Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any 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 such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein 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 Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires 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, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply 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 adverse change in the relevant exchange rates or in the availability of the Euro to any Borrower or any Subsidiary or in the relevant currency markets generally; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any of their Subsidiaries.

The Lead 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 Lead Borrower's instructions or other irregularity, the Lead Borrower will immediately notify the L/C Issuer. The Borrowers 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.

(f) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters



described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers 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 UCP, as applicable, 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.

(h) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, in Dollars, 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; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.18(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. 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 first Business Day after the end 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 Letter of Credit Expiration 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 Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit, at the rate specified in the Fee Letter, 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 tenth 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 Letter of Credit Expiration 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 Borrowers 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.

(j) 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.

(k) 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 that is a Guarantor, the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of any Guarantor inures to the benefit of the Borrowers, and that the Borrowers' business derives substantial benefits from the businesses of the other Loan Parties.

## 2.04 Swing Line Loans

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, to make loans (each such loan, a "Swing Line Loan") to the Lead 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 Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Credit Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided, however, that (x) after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender at such time, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line



Loans at such time shall not exceed such Lender's Revolving Credit Commitment, (y) the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) the Swing Line Lender shall not be under any obligation to make any Swing Line 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 Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Swing Line Loan. Neither the German Borrower nor the UK Borrower may borrow under the Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by: (A) telephone or (B) a Swing Line Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (or such later time on such date acceptable to the Swing Line Lender) on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line 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 Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Lead Borrower at its office by crediting the account of the Lead Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans. (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Lead Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed 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 Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Lead Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed 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 Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Lead Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line 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 Swing Line 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 Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line 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 Loan included in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line 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 Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line 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 Swing Line Lender, any 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, however, that each Revolving Credit Lender's obligation to make Revolving Credit 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 Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations. (i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit 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 Swing Line 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 Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Lead Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## 2.05 Prepayments

### (a) Optional.

(i) Subject to the last sentence of this Section 2.05(a)(i), the Borrowers may, pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (or such later time on such date acceptable to the Administrative Agent) (1) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (C) 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 Eurocurrency Rate 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 ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that any notice of prepayment may be conditioned on the occurrence of a specified event, the proceeds of which are intended to be utilized to make such prepayment, and any such notice that is so conditioned may be revoked (or the prepayment date delayed) to the extent such condition is not satisfied. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.07. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the Term Facility and any Incremental Tranche, as the Borrowers may elect and, within such tranche, in direct order of maturity to the principal repayment installments thereof, (unless otherwise directed by the Lead Borrower), each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swing Line Lender pursuant to delivery to the Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (or such later time on such date acceptable to the Swing Line Lender) on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$500,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that any notice of prepayment may be conditioned on the occurrence of a specified event, the proceeds of which are intended to be utilized to make such prepayment, and any such notice that is so conditioned may be revoked (or the prepayment date delayed) to the extent such condition is not satisfied.

(b) Mandatory.

(i) If any Loan Party or any of its Domestic Subsidiaries Disposes of any property pursuant to Section 7.05(l) which results in the realization by such Person of Net Cash Proceeds, the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within three (3) Business Days of receipt thereof by such Person (such prepayments to be applied as set forth in clauses (v) and (viii) below); provided, however, that, at the election of the Borrowers (as notified by the Lead Borrower to the Administrative Agent on or prior to the date of such Disposition), and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in assets used or useful in the business of the Loan Parties so long as within 365 days after the receipt of such Net Cash Proceeds,

either (x) such purchase shall have been consummated or (y) a binding definitive agreement for such purchase shall have been entered into and such purchase shall have been consummated within 180 days after such binding definitive agreement, in each of cases (x) and (y) as certified by the Lead Borrower in writing to the Administrative Agent; and provided further, however, that any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(i).

(ii) [Intentionally Omitted].

(iii) Upon the incurrence or issuance by Holdings or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom within three (3) Business Days of receipt thereof by Holdings or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (viii) below).

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of any Loan Party or any of its Domestic Subsidiaries, and not otherwise included in clause (i) of this Section 2.05(b), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within three (3) Business Days of receipt thereof by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (viii) below); provided, however, that with respect to any proceeds of insurance or condemnation awards (or payments in lieu thereof), at the election of the Borrowers (as notified by the Lead Borrower to the Administrative Agent on or prior to the date of receipt of such insurance proceeds or condemnation awards), and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may apply within 365 days after the receipt of such cash proceeds either (x) to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received or to the acquisition of assets used or useful in the business of the Loan Parties or (y) enter into a binding definitive agreement for such replacement, repair or acquisition and such replacement, repair or acquisition shall have been completed within 180 days after such binding definitive agreement; and provided, further, however, that any cash proceeds not so applied shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(iv).

(v) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, first, to the Term Facility and any applicable Incremental Tranche and, in each case, to the principal repayment installments thereof first, in direct order of maturity for the first four installments, second, pro rata to the remaining installments (excluding the Maturity Date installment), third, to the Maturity Date installment and fourth, to the Revolving Credit Facility in the manner set forth in clause (viii) of this Section 2.05(b).

(vi) Notwithstanding any of the other provisions of clause (i), (iii) or (iv) of this Section 2.05(b), so long as no Default under Section 8.01(a) or Section 8.01(f), or Event of Default shall have occurred and be continuing, if, on any date on which a prepayment



would otherwise be required to be made pursuant to clause (i), (iii) or (iv) of this Section 2.05(b), the aggregate amount of Net Cash Proceeds received in any calendar year and required by such clause to be applied to prepay Loans on such date is less than or equal to \$1,000,000, the Borrowers shall not be obligated to make such prepayment.

(vii) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, in either such case, the Borrowers shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

(viii) Prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, in the case of prepayments of the Revolving Credit Facility required pursuant to clause (i), (iii) or (iv) of this Section 2.05(b), the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Swing Line Loans and Revolving Credit Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the “Reduction Amount”) may be retained by the Borrowers for use in the ordinary course of its business, and the Revolving Credit Facility shall be automatically and permanently reduced by the Reduction Amount as set forth in Section 2.06(b)(ii) and Section 2.06(b)(iii). Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

(ix) Notwithstanding any other provisions of this Section 2.05(b), to the extent that the repatriation of an amount of such Net Cash Proceeds would result in material adverse tax consequences to Holdings and its Subsidiaries on a consolidated basis, an amount equal to the portion of such Net Cash Proceeds so affected will not be required to be applied to repay the Loans but only so long as the repatriation of such amount of Net Cash Proceeds would result in material adverse tax consequences to Holdings and its Subsidiaries on a consolidated basis.

## 2.06 Termination or Reduction of Commitments

(a) Optional. The Borrowers may, upon notice provided by the Lead Borrower to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. (or such later time on such date acceptable to the Administrative Agent) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$500,000 or any whole multiple of \$100,000 in excess thereof and (iii) the Borrowers shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any

concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Letter of Credit Sublimit; provided that any notice of reduction or termination may be conditioned on the occurrence of a specified event, the proceeds of which are intended to be utilized to refinance the commitments so reduced or terminated, and any such notice that is so conditioned may be revoked (or the reduction or termination date delayed) to the extent such condition is not satisfied.

(b) Mandatory.

(i) The aggregate Term Commitments shall be automatically and permanently reduced to zero on the date of the Term Borrowing.

(ii) The Revolving Credit Facility shall be automatically and permanently reduced on each date on which the prepayment of Revolving Credit Loans outstanding thereunder is required to be made pursuant to Section 2.05(b)(i), (iii) or (iv) by an amount equal to the applicable Reduction Amount.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans

(a) Term Loans. The Borrowers shall repay to the Term Lenders in Euros the aggregate principal amount of all Term Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05):

<del>DATE</del> <u>Date</u>	Amount
March 18, 2020	€1,131,325.51

June 18, 2020	€1,130,000.00
September 18, 2020	€1,130,000.00
December 18, 2020	€1,130,000.00
March 18, 2021	€1,130,000.00
June 18, 2021	€1,130,000.00
September 18, 2021	€1,130,000.00
December 18, 2021	€1,130,000.00
March 18, 2022	€1,130,000.00
June 18, 2022	€1,130,000.00
September 18, 2022	€1,130,000.00
December 18, 2022	€1,130,000.00
March 18, 2023	€1,130,000.00
June 18, 2023	€1,130,000.00
September 18, 2023	€1,130,000.00
December 18, 2023	€1,130,000.00
March 18, 2024	€1,130,000.00
June 18, 2024	€1,130,000.00
September 18, 2024	€1,130,000.00
December 18, 2024	€1,130,000.00

provided, however, that the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date. For the avoidance of doubt, all repayments of the Term Loans shall be made in Euros.

(b) Revolving Credit Loans. The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.



(c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

## 2.08 Interest

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility 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 for such Facility; ~~and~~ (iii) each Swing Line 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 for the Revolving Credit Facility and (iv) each Alternative Currency Daily Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Daily Rate plus the Applicable Rate.

(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 Borrowers 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 request of the Required Lenders, while any Event of Default is continuing, the Borrowers 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 Sections 2.03(h) and (i):

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee equal to the Applicable Fee Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Revolving Credit Facility 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 Third Restatement Date, and on the last day of the Availability Period for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Fee Rate separately for each period during such quarter that such Applicable Fee Rate was in effect.

(b) Other Fees.

(i) The Borrowers shall pay to the Arrangers 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 Borrowers 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 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) or, in the case of interest in respect of Loans denominated in Alternative Currencies (x) on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed, or (y) in the case of an Alternative Currency as to which market practice differs from the foregoing, in accordance with such market practice. 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 Holdings or for any other reason, the Borrowers or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by Holdings as of any applicable date was inaccurate

and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrowers 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 any 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 paragraph 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(c)(iii), 2.03(h) or 2.08(b) or under Article VIII.

## 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 and by the Administrative Agent in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). Subject to the Register, the accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers 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 Borrowers 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 accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers 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 Section 2.11(a), 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 Swing Line 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 Borrowers 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 Borrowers 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 in respect of the relevant Facility (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.

(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 Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such 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 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 Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers 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 Borrowers 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 Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers 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 Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the 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 Lead Borrower with respect to any amount owing under this subsection (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 Borrowers 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 Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any 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 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 (a) Obligations in respect of any the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder

and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time 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 Loans and subparticipations in L/C Obligations and Swing Line 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 Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, 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 (A) any payment made by or on behalf of the Borrowers 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), (B) the application of Cash Collateral provided for in Section 2.17, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant in compliance with Section 11.06. Notwithstanding the foregoing, no amount setoff from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

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 Extension of Maturity Date in respect of Term Loans or Revolving Credit Facility

(a) Requests for Extension. The Borrowers may, by notice to the Administrative Agent (who shall promptly notify the Lenders) not earlier than 45 days and not later than 15 Business Days prior to the Maturity Date then in effect hereunder in respect of any Facility (the “Existing Maturity Date”), request that each applicable Lender extend such Lender’s Maturity Date in respect of such Facility for an additional 364 days from the Existing Maturity Date.

(b) Lender Elections to Extend. Each Lender under the applicable Facility, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not earlier



than 30 days prior to the Existing Maturity Date and not later than the date (the “Notice Date”) that is 10 Business Days prior to the Existing Maturity Date, advise the Administrative Agent whether or not such Lender agrees to such extension (and each Lender that determines not to so extend its Maturity Date (a “Non-Extending Lender”) shall notify the Administrative Agent of such fact promptly after such determination (but in any event no later than the Notice Date) and any Lender that does not so advise the Administrative Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender under the applicable Facility to so agree.

(c) Notification by Administrative Agent. The Administrative Agent shall notify the Borrowers of each Lender’s determination under this Section no later than the date 15 days prior to the Existing Maturity Date (or, if such date is not a Business Day, on the next preceding Business Day).

(d) Additional Commitment Lenders. The Borrowers shall have the right to replace each Non-Extending Lender with, and add as Lenders under the applicable Facility under this Agreement in place thereof, one or more Eligible Assignees (each, an “Additional Commitment Lender”) as provided in Section 11.14; provided that each of such Additional Commitment Lenders shall enter into an Assignment and Assumption pursuant to which such Additional Commitment Lender shall, effective as of the Existing Maturity Date, undertake a Revolving Credit Commitment or a Term Loan (and, if any such Additional Commitment Lender in respect of the Revolving Credit Facility is already a Revolving Credit Lender, its Revolving Credit Commitment shall be in addition to any other Revolving Credit Commitment of such Lender hereunder on such date; if any such Additional Commitment Lender in respect of the Term Facility is already a Term Lender, its Term Loan shall be in addition to any other Term Loan of such Lender).

(e) Minimum Extension Requirement. If (and only if) the total of the Revolving Credit Commitments of the Revolving Credit Lenders that have agreed so to extend their Maturity Date (each, an “Extending Lender”) and the additional Revolving Credit Commitments of the Additional Commitment Lenders shall be more than 50% of the aggregate amount of the Revolving Credit Commitments in effect immediately prior to the Existing Maturity Date, then, effective as of the Existing Maturity Date, the Maturity Date in respect of the Revolving Credit Facility of each Extending Lender and of each Additional Commitment Lender shall be extended to the date falling 364 days after the Existing Maturity Date (except that, if such date is not a Business Day, such Maturity Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a “Revolving Credit Lender” for all purposes of this Agreement.

(f) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, the Lead Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Existing Maturity Date (in sufficient copies for each Extending Lender and each Additional Commitment Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (ii) in the case of the Lead Borrower, certifying that, before and after giving effect to such extension, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Existing Maturity Date,



except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, and (B) no Default or Event of Default exists. In addition, on the Maturity Date of each Non-Extending Lender, the Borrowers shall prepay any Loans outstanding on such date (and pay any additional amounts required pursuant to Section 3.07) to the extent necessary to keep outstanding Committed Loans ratable with any revised Applicable Percentages of the respective Lenders effective as of such date.

(g) Other Extension Transactions. In addition to the foregoing, the Borrowers may consummate other transactions for the purpose of extending the maturity date of any Facility hereunder pursuant to procedures reasonably satisfactory to the Administrative Agent (an “Alternative Extension Transaction”); provided that each Lender under the applicable Facility shall be afforded the opportunity to participate in any such Alternative Extension Transaction.

(h) Extension Amendment. Any extension consummated in accordance with the provisions above shall be effected by an amendment to this Agreement (the “Extension Amendment”) executed by the Borrowers, the Administrative Agent and each Lender participating in such transaction, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 11.01, the Extension Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.15. In addition, unless otherwise specifically provided herein, all references in Loan Documents to any Facility shall be deemed, unless the context otherwise requires, to include references to such extended Facility established pursuant to the Extension Amendment.

(i) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

## 2.15 Increase in Revolving Credit Facility

(a) Request for Increase. Upon notice to the Administrative Agent (which shall promptly notify the Revolving Credit Lenders), the Borrowers may from time to time, request an increase in the Revolving Credit Facility (each, an “Incremental Revolving Commitment”) by an amount (for all such requests, when aggregated with any increases under Section 2.16) not exceeding \$200,000,000 after the First Amendment Effective Date; provided, that any such request for an increase shall be in a minimum amount of \$5,000,000. The Limited Condition Transaction provisions set forth in Section 1.09 shall not apply in respect of the funding of an Incremental Revolving Commitment. The Borrowers may make a maximum of three requests for an Incremental Revolving Commitment or Incremental Tranche prior to the Maturity Date. At the time of sending such notice, the Lead Borrower, on behalf of the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Revolving Credit Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Revolving Credit Lenders).

(b) Lender Elections to Increase. Each Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Credit Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Revolving Credit Percentage of such requested increase. Any Revolving Credit Lender not responding within such time period shall be deemed to have declined to increase its Revolving Credit Commitment.

(c) Notification by Administrative Agent; Additional Revolving Credit Lenders. The Administrative Agent shall notify the Borrowers and each Revolving Credit Lender of the Revolving Credit 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 Swing Line Lender (which approvals shall not be unreasonably withheld), the Borrowers may also invite additional Eligible Assignees to become Revolving Credit Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Revolving Credit Facility is increased in accordance with this Section, the Administrative Agent and the Borrowers shall determine the effective date (the "Revolving Credit Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Revolving Credit Lenders of the final allocation of such increase and the Revolving Credit Increase Effective Date.

(e) The Incremental Revolving Commitments shall be effected by a joinder agreement (the "Revolving Increase Joinder") executed by the Borrowers, the Administrative Agent and each Lender making such Incremental Revolving Commitment, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 11.01, the Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.15. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Revolving Credit Loans shall be deemed, unless the context otherwise requires, to include references to Revolving Credit Loans made pursuant to Incremental Revolving Commitments made pursuant to this Agreement.

(f) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Lead Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Credit Increase Effective Date signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Lead Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Revolving Credit Increase Effective Date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (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, and (B) no Event of Default exists. The Borrowers shall prepay any Revolving Credit Loans outstanding on the Revolving Credit Increase Effective Date (and pay any additional amounts required pursuant to Section 3.07) to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Revolving Credit Percentages arising from any nonratable increase in the Revolving Credit Commitments under this Section.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

## 2.16 Increase in Term Facility

(a) Request for Increase. Upon notice to the Administrative Agent (which shall promptly notify the Term Lenders), the Borrowers may from time to time, request an increase in the Term Loans or a new tranche of Term Loans (an (“Incremental Tranche”)) by an amount (for all such requests, when aggregated with any increases under Section 2.15) not exceeding \$200,000,000 after the First Amendment Effective Date; provided that any such request for an increase shall be in a minimum amount of \$5,000,000. The Borrowers may make a maximum of three requests for an Incremental Revolving Commitment or Incremental Tranche prior to the Maturity Date. At the time of sending such notice, the Lead Borrower, on behalf of the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Term Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Term Lenders).

(b) Lender Elections to Increase. Each Term Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Term Loans or participate in the Incremental Tranche and, if so, whether by an amount equal to, greater than, or less than its ratable portion (based on such Term Lender’s Applicable Percentage in respect of the Term Facility) of such requested increase. Any Term Lender not responding within such time period shall be deemed to have declined to increase its Term Loans.

(c) Notification by Administrative Agent; Additional Term Lenders. The Administrative Agent shall notify the Borrowers and each Term Lender of the Term 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 (which approval shall not be unreasonably withheld), the Borrowers may also invite additional Eligible Assignees to become Term Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Term Loans are increased or an Incremental Tranche is added in accordance with this Section, the Administrative Agent and the Borrowers shall determine the effective date (the “Term Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Term Lenders of the final allocation of such increase or Incremental Tranche and the Term Increase Effective Date. As of the Term Increase Effective Date, (a) for an increase in the Term Loans, the amortization schedule for the Term Loans set forth in Section 2.07(a) shall be amended to

increase the then-remaining unpaid installments of principal by an aggregate amount equal to the additional Term Loans being made on such date, such aggregate amount to be applied to increase such installments ratably in accordance with the amounts in effect immediately prior to the Term Increase Effective Date, pursuant to the Term Increase Joinder or (b) such Incremental Tranche (i) shall rank *pari passu* in right of payment and of security with the Revolving Credit Loans and the Term Loans, (ii) shall not mature earlier than the Maturity Date and shall have a weighted average life to maturity no shorter than the weighted average life to maturity of the Term Loans (except by virtue of amortization of or prepayment of such Term Loans prior to such date of determination) and (iii) except as set forth above, shall be treated substantially the same as the Term Loans (in each case, including with respect to mandatory and voluntary prepayments), provided that the interest rates and amortization schedule (subject to clause (ii) above) applicable to the Incremental Tranche shall be determined by the Borrowers and the lenders thereof and set forth in the Term Increase Joinder; provided further that (i) if the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount that are paid to all Lenders (and not any one Lender) providing such Incremental Tranche, based on a deemed four-year maturity) relating to any Incremental Tranche exceeds the Applicable Rate relating to the existing Term Loans immediately prior to the effectiveness of the applicable Term Increase Joinder by more than 0.50%, the Applicable Rate relating to the existing Term Loans shall be adjusted to be equal to the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount that are paid to all Lenders (and not any one Lender) providing such Incremental Tranche) relating to such Incremental Tranche minus 0.50%.

(e) The Incremental Tranche shall be effected by a joinder agreement (the “Term Increase Joinder”) executed by the Borrowers, the Administrative Agent and each Lender making such Incremental Tranche, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 11.01, the Term Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.16. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to an Incremental Tranche made pursuant to this Agreement.

(f) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Lead Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Term Increase Effective Date signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Lead Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Term Increase Effective Date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (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 or Event of Default exists (provided that to the extent the proceeds of an Incremental Tranche will be used to finance a Limited Condition Transaction, such condition may, at the Borrower's election, be no Event of Default on the date of execution and effectiveness of the definitive purchase agreement and no payment or bankruptcy Event of Default in existence at the time of incurrence of such Incremental Tranche) on the Term Increase Effective Date. The additional Term Loans shall be made by the Term Lenders participating therein pursuant to the procedures set forth in Section 2.02.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

## 2.17 Cash Collateral

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, the Borrowers shall immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 100% of such Outstanding Amount, or (ii) if, as of the Maturity Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 105% of such Outstanding Amount. At any time that there shall exist a Defaulting Lender, promptly following the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrowers shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.18(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked deposit accounts at Bank of America. The Borrowers, and to the extent provided by any Lender, such Lender, hereby grant to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), and agree 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 2.17(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 as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrowers or the relevant Defaulting Lender 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.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.17 or Sections 2.03, 2.04, 2.05, 2.18 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, 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 be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or 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 Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.17 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## 2.18 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. That 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 Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that 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 that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, to the funding of any Loan in respect of which that 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 Borrowers, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that 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 Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that 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 that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made 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 Borrowings 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 Borrowings owed to, that Defaulting Lender. 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 2.18(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Committed Loans of that Lender. Subject to Section 11.24, 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.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be 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 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 Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with



their Applicable Percentages (without giving effect to Section 2.18(a)(iv)), whereupon that 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 Borrowers 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.

## 2.19      Designated Lenders

Each of the Administrative Agent, the L/C Issuer, the Swing Line Lender and each Lender at its option may make any Credit Extension or otherwise perform its obligations hereunder through any Lending Office (each, a "Designated Lender"); provided that any exercise of such option shall not affect the obligation of such Borrower to repay any Credit Extension in accordance with the terms of this Agreement. Any Designated Lender shall be considered a Lender; provided that in the case of an Affiliate or branch of a Lender, all provisions applicable to a Lender shall apply to such Affiliate or branch of such Lender to the same extent as such Lender; provided that for the purposes only of voting in connection with any Loan Document, any participation by any Designated Lender in any outstanding Credit Extension shall be deemed a participation of such Lender.

# ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

## 3.01      Taxes

(a)      Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i)      Any and all payments by or on account of any obligation of the Borrowers or any other Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require any Borrower, any other Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws by such Borrower, such other Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii)      If any Borrower, any other Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Borrower or such other Loan Party, as the case may be, shall be increased as necessary so that after any

required withholding or the making of all required deductions (including deductions on account of Indemnified Taxes or Other Taxes applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Borrower, any other Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions on account of Indemnified Taxes or Other Taxes applicable to additional sums payable under this Section 3.01) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers and Other Loan Parties. Without limiting or duplication of the provisions of subsection (a) above, each Borrower and each other Loan Party 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.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, each Borrower and each other Loan Party shall, and does hereby, jointly and severally, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 20 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by any Borrower, any other Loan Party or the Administrative Agent or paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each Borrower and each other Loan Party shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within 20 days after demand therefor, for any amount which any Lender or L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 20 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or L/C Issuer (but only to the extent that any Borrower or any other Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of any Borrower or any other Loan Party to do so), (y) the Administrative Agent and any Borrower and any other Loan Party, as applicable, against any Taxes attributable to such Lender's or L/C Issuer's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and any Borrower and any other Loan Party, as applicable, against any Excluded Taxes attributable to such Lender or L/C Issuer, in each case, that are payable or paid by the Administrative Agent or any Borrower or any other Loan Party 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 or L/C Issuer by the Administrative Agent shall be conclusive absent manifest error. Each Lender and L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Borrower, any other Loan Party or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Borrower and such other Loan Party shall each deliver to the Administrative Agent or the Administrative Agent shall deliver to the Lead Borrower and Holdings, as the case may be, 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 Lead Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Lead Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the applicable Borrower, the applicable other Loan Party or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes (including withholding under FATCA), (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrowers or other Loan Party, as the case may be pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes (including withholding under FATCA) in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if any Borrower or any other Loan Party, as the case may be is resident for tax purposes in the United States, or any payments made by or on account of any obligation of any Borrower or Loan Party hereunder or under any other Loan Document constitute income from sources within the United States for U.S. federal income tax purposes,

(A) any Lender, the L/C Issuer or the Administrative Agent that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Person becomes a party to this Agreement executed copies of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Borrowers or the Administrative Agent, as the case may be, to determine whether or not such Person is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) 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 request of the Lead Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed copies of Internal Revenue Service Form W-8BEN-E (or W-BEN, as applicable) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed copies of Internal Revenue Service Form W-8ECI,

(III) executed copies of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) 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 in the form of Exhibit J and (y) executed copies of Internal Revenue Service Form W-8BEN-E (or W-8BEN, as applicable), or

(V) executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made;

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were

to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead 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 Borrowers or the Administrative Agent as may be necessary for the Borrowers 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 clause Section 3.01(e)(ii)(C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender shall promptly (A) notify the Lead Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office pursuant to Section 3.08(a)) to avoid any requirement of applicable Laws of any jurisdiction that any Borrower, any other Loan Party or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) For purposes of determining withholding Taxes imposed under the FATCA, from and after the Third Restatement Date, each Borrower, each other Loan Party and the Administrative Agent shall treat (and the Lenders the L/C Issuers hereby authorize the Administrative Agent to treat) the Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(v) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification, provide such successor form, or promptly notify the Lead Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) 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 the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Borrower or any other Loan Party, as the case may be or with respect to which any Borrower or any other Loan Party, as the case may be has paid additional amounts pursuant to this Section, it shall pay to such Borrower or such other Loan Party, as the case may be an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower or such other Loan Party, as the case may be under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid

by the relevant Governmental Authority with respect to such refund), provided that such Borrower or such other Loan Party, as the case may be, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Borrower or such other Loan Party, as the case may be (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the Administrative Agent, any Lender or any L/C Issuer be required to pay any amount to any Borrower or any other Loan Party pursuant to this subsection the payment of which would place such Administrative Agent, Lender or L/C Issuer in a less favorable net after-Tax position than such Administrative Agent, Lender or L/C Issuer 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 subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Borrower, any other Loan Party or any other Person.

(g) 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, any Lender or L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 (I) U.K. Taxes on Payments in respect of the U.K. Facility

(a) The provisions of this Section 3.02(I) shall only apply in respect of Taxes imposed by any taxing authority on payments made in respect of the U.K. Facility. For the avoidance of doubt, the provisions of Section 3.01(a)-(d) and (f) shall not apply in respect of payments made in respect of the U.K. Facility.

#### (b) U.K. Tax Gross-Up.

(i) Each Borrower shall make all payments to be made by it in respect of the U.K. Facility under any Loan Document without any Tax Deduction, unless a Tax Deduction is required by Law.

(ii) A Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Administrative Agent accordingly. Similarly, a U.K. Lender shall promptly notify the Administrative Agent on becoming so aware in respect of a payment payable to that Lender in respect of the U.K. Facility. If the Administrative Agent receives such notification from a Lender they shall notify the U.K. Borrower.

(iii) If a Tax Deduction is required by Law to be made by a Borrower in respect of the U.K. Facility, the amount of the payment due from that Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no such Tax Deduction had been required.



(iv) A payment shall not be increased under clause (iii) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:

(A) the payment could have been made to the relevant U.K. Lender without a Tax Deduction if the U.K. Lender had been a U.K. Qualifying Lender, but on that date that U.K. Lender is not or has ceased to be a U.K. Qualifying Lender other than as a result of any change after the date it became a U.K. Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or

(B) the relevant U.K. Lender is a U.K. Qualifying Lender solely by virtue of clause (a)(ii) of the definition of U.K. Qualifying Lender, and:

(1) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “Direction”) under section 931 of the ITA which relates to the payment and that U.K. Lender has received from the U.K. Borrower making the payment a certified copy of that Direction; and

(2) the payment could have been made to the U.K. Lender without any Tax Deduction if that Direction had not been made; or

(C) the relevant U.K. Lender is a U.K. Qualifying Lender solely by virtue of clause (a)(ii) of the definition of U.K. Qualifying Lender and:

(1) the relevant U.K. Lender has not given a Tax Confirmation to the U.K. Borrower; and

(2) the payment could have been made to the Lender without any Tax Deduction if the U.K. Lender had given a Tax Confirmation to the U.K. Borrower, on the basis that the Tax Confirmation would have enabled the applicable U.K. Borrower to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or

(D) the relevant Lender is a U.K. Treaty Lender and the payment could have been made to the Lender without the Tax Deduction had that U.K. Lender complied with its obligations under clause (vii) below.

(v) If a Borrower is required to make a Tax Deduction, that Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(vi) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Administrative Agent for the benefit of the U.K. Lender entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that U.K. Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant U.K. taxing authority.



(vii) A U.K. Treaty Lender and each Borrower which makes a payment to which that U.K. Treaty Lender is entitled in respect of the U.K. Facility shall promptly complete any procedural formalities necessary for that Borrower to obtain authorization to make that payment without a Tax Deduction; provided that any U.K. Lender that has provided its scheme reference number and its jurisdiction of tax residence pursuant to Section 3.02(I)(b)(xii) or (d)(i) shall be under no obligation pursuant to this Section 3.02(I)(b)(vii).

(viii) If a U.K. Lender has provided its scheme reference number and its jurisdiction of tax residence pursuant to Section 3.02(I)(b)(xii) or (d)(i) (HMRC DT Treaty Passport scheme confirmation) and:

(A) a U.K. Borrower making a payment to that U.K. Lender has not filed a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs pursuant to Section 3.02(I)(b)(xiii) or (d)(ii); or

(B) a U.K. Borrower making a payment to that Lender has filed a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs pursuant to Section 3.02(I)(b)(xiii) or (d)(ii) but:

(1) that form DTTP2 has been rejected by HM Revenue & Customs; or

(2) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 45 days of the date of the filing of the form DTTP2,

and in each case, the U.K. Borrower has notified that U.K. Lender in writing, that U.K. Lender and the U.K. Borrower shall promptly complete any additional procedural formalities necessary for that U.K. Borrower to obtain authorisation to make that payment without a Tax Deduction.

(ix) Nothing in Section 3.02(I)(b)(vii) above or in Section 3.01(e) shall require a U.K. Treaty Lender to:

(A) register under the HMRC DT Treaty Passport scheme; or

(B) apply the HMRC DT Treaty Passport scheme to any advance if it has so registered.

(x) A U.K. Non-Bank Lender which becomes a U.K. Lender on the date of this Agreement is entered into gives a Tax Confirmation to the U.K. Borrower by entering into this Agreement.

(xi) A U.K. Non-Bank Lender shall promptly notify the U.K. Borrower and the Administrative Agent if there is any change in the position from that set out in the Tax Confirmation.

(xii) A U.K. Treaty Lender which becomes a U.K. Lender on the date of this Agreement, holds a passport under the HMRC DT Treaty Passport scheme, and wishes that scheme to apply to a Loan Document, confirms its scheme reference number and its jurisdiction of tax residence in its signature page hereto.



(xiii) Where a U.K. Lender notifies the U.K. Borrower or the Administrative Agent as described in Section 3.02(I)(b)(xi), the U.K. Borrower shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide the Administrative Agent and the U.K. Lender with a copy of that filing.

(xiv) If a U.K. Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to the U.K. Facility in accordance with Section 3.02(I)(b)(xi) or (d)(i), the U.K. Borrower shall not file any form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's advance or its participation in any advance.

(c) U.K. Lender Status Confirmation. Each U.K. Lender which becomes a U.K. Lender on the date of this Agreement confirms that, at the date of this Agreement, it is a U.K. Qualifying Lender. Each U.K. Lender which becomes a U.K. Lender after the date of this Agreement shall indicate, in the Assignment and Assumption which it executes on becoming a party, which of the following categories it falls within:

- (i) not a U.K. Qualifying Lender;
- (ii) a U.K. Qualifying Lender (other than a U.K. Treaty Lender); or
- (iii) a U.K. Treaty Lender.

If a U.K. Lender fails to indicate its status in accordance with this Section 3.02(I)(c), then such U.K. Lender shall be treated for the purposes of this Agreement (including by the U.K. Borrower) as if it is not a U.K. Qualifying Lender until such time as it notifies the Administrative Agent which category of U.K. Qualifying Lender applies (and the Administrative Agent, upon receipt of such notification, shall inform the U.K. Borrower). For the avoidance of doubt, an Assignment and Assumption shall not be invalidated by any failure of a U.K. Lender to comply with this Section 3.02(I)(c). A U.K. Lender must promptly notify the Administrative Agent if its status changes (and the Administrative Agent on receipt of such notification shall promptly inform the U.K. Borrower).

(d) HMRC DT Treaty Passport Scheme Confirmation.

(i) A U.K. Lender which becomes a U.K. Lender after the date of this Agreement, is a U.K. Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and wishes that scheme to apply to the U.K. Facility, shall include an indication to that effect in the Assignment and Assumption which it executes by including its scheme reference number and its jurisdiction of tax residence in that Assignment and Assumption.

(i) Where an Assignment and Assumption includes the indication described in clause (d)(i) above, the U.K. Borrower which is a party to this Agreement as at the date that the relevant Assignment and Assumption is executed (the "Transfer Date") shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that Transfer Date and shall promptly provide the Administrative Agent and the applicable U.K. Lender with a copy of that filing.

(e) U.K. Tax Indemnity. The U.K. Borrower shall (within the later of (i) 10 days of demand therefor and (ii) three (3) Business Days before the relevant loss, liability or cost will be suffered) pay to a U.K. Lender or the Administrative Agent an amount equal to the loss, liability or cost that such U.K. Lender or the Administrative Agent (as applicable) determines in its reasonable discretion has been (directly or indirectly) suffered by such U.K. Lender or the Administrative Agent, as applicable, for or on account of any Tax in respect of the U.K. Facility. Notwithstanding the foregoing, this Section 3.02(I)(e) shall not apply:

(i) with respect to any Tax assessed on any Lender or the Administrative Agent:

(A) under the law of the jurisdiction in which such Lender or the Administrative Agent, as applicable, is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender or Administrative Agent is treated as resident for Tax purposes or as having a permanent establishment to which its interest in a loan is attributable; or

(B) under the law of the jurisdiction in which such Lender's lending office is located in respect of amounts received or receivable in that jurisdiction;

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by such Lender or Administrative Agent, as applicable;

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Section 3.02(I)(b), above; or

(B) would have been compensated for by an increased payment under Section 3.02(I)(b), above, but was not so compensated solely because one of the exclusions in Section 3.02(I)(b)(iv) applied.

(iii) with respect to any Tax required to be withheld or deducted pursuant to FATCA.

A U.K. Lender or Administrative Agent making, or intending to make, a claim under this Section 3.02(I)(e) shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the U.K. Borrower.

### 3.02 (II) German Taxes on Payments in respect of the German Facility

(a) The provisions of this Section 3.02(II) shall only apply in respect of Taxes imposed by any taxing authority on payments made in respect of the German Facility. For the avoidance of doubt, the provisions of Section 3.01(a)-(d) and (f) shall not apply in respect of payments made in respect of the German Facility.

(b) German Tax Gross-Up.

(i) The German Borrower shall make all payments to be made by it in respect of the German Facility under any Loan Document without any Tax Deduction, unless a Tax Deduction is required by Law.

(ii) The German Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Administrative Agent accordingly. Similarly, a Lender shall promptly notify the Administrative Agent on becoming so aware in respect of a payment payable to that Lender in respect of the German Facility. If the Administrative Agent receives such notification from a Lender they shall notify the German Borrower.

(iii) If a Tax Deduction is required by Law to be made by the German Borrower in respect of the German Facility, the amount of the payment due from the German Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no such Tax Deduction had been required.

(iv) A payment shall not be increased under clause (iii) above by reason of a Tax Deduction on account of Tax imposed by Germany, if on the date on which the payment falls due:

(A) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a German Qualifying Lender, but on that date that Lender is not or has ceased to be a German Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or German Treaty, or any published practice or published concession of any relevant taxing authority; or

(B) the relevant Lender is a German Treaty Lender and the German Borrower making the payment is able to demonstrate that the payment could have been made to the relevant Lender without the Tax Deduction had that relevant Lender complied with its obligations under paragraph (vii) below.

(v) If the German Borrower is required to make a Tax Deduction, the German Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(vi) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the German Borrower making that Tax Deduction shall deliver to the Administrative Agent evidence reasonably satisfactory that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(vii) A German Treaty Lender and the German Borrower which makes a payment to which that German Treaty Lender is entitled in respect of the German Facility shall co-operate in completing any procedural formalities necessary for the German Borrower to obtain authorization to make that payment without a Tax Deduction.

(c) German Lender Status Confirmation. Each German Lender which becomes a German Lender on the date of this Agreement confirms that, at the date of this Agreement, it is a German Qualifying Lender. Each German Lender which becomes a German Lender after the date of this Agreement shall indicate, in the Assignment and Assumption which it executes on becoming a party, which of the following categories it falls within:

- (i) not a German Qualifying Lender;
- (ii) a German Qualifying Lender (other than a German. Treaty Lender); or
- (iii) a German Treaty Lender.

If a German Lender fails to indicate its status in accordance with this Section 3.02(I)(c), then such German Lender shall be treated for the purposes of this Agreement (including by the German Borrower) as if it is not a German Qualifying Lender until such time as it notifies the Administrative Agent which category of German Qualifying Lender applies (and the Administrative Agent, upon receipt of such notification, shall inform the German Borrower). For the avoidance of doubt, an Assignment and Assumption shall not be invalidated by any failure of a German Lender to comply with this Section 3.02(I)(c). A German Lender must promptly notify the Administrative Agent if its status changes (and the Administrative Agent on receipt of such notification shall promptly inform the German Borrower).

(d) German Tax Indemnity. The German Borrower shall (within the later of (i) 10 days of demand therefor and (ii) three (3) Business Days before the relevant loss, liability or cost will be suffered) pay to a German Lender or the Administrative Agent an amount equal to the loss, liability or cost that such German Lender or the Administrative Agent (as applicable) determines in its reasonable discretion has been (directly or indirectly) suffered by such German Lender or the Administrative Agent, as applicable, for or on account of any Tax in respect of the German Facility. Notwithstanding the foregoing, this Section 3.02(II)(d) shall not apply:

- (i) with respect to any Tax assessed on any Lender or the Administrative Agent:
  - (A) under the law of the jurisdiction in which such Lender or the Administrative Agent, as applicable, is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender or Administrative Agent is treated as resident for Tax purposes or as having a permanent establishment to which its interest in a loan is attributable; or
  - (B) under the law of the jurisdiction in which such Lender's lending office is located in respect of amounts received or receivable in that jurisdiction;

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by such Lender or Administrative Agent, as applicable;

- (ii) to the extent a loss, liability or cost:

(C) is compensated for by an increased payment under Section 3.02(II)(b), above;  
or

(D) would have been compensated for by an increased payment under Section 3.02(II)(b), above, but was not so compensated solely because one of the exclusions in Section 3.02(II)(b)(iv) applied.

(iii) with respect to any Tax required to be withheld or deducted pursuant to FATCA.

A German Lender or Administrative Agent making, or intending to make, a claim under this Section 3.02(II)(d) shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the German Borrower.

(e) German Tax Credit. If the German Borrower makes a German Tax Payment and the relevant Lender determines that:

(i) a German Tax Credit is attributable to an increased payment of which the German Tax Payment forms part, to that the German Tax Payment or to a Tax Deduction in consequence of which the payment under German Tax Payment was required; and

(ii) the relevant Lender has obtained and utilized that German Tax Credit,

the relevant Lender shall pay an amount to the German Borrower which will leave the relevant Lender (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the German Borrower.

### 3.03 VAT

(a) All amounts expressed to be payable under any Loan Document by any party to any Agent or a Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Section 3.03(b) below, if VAT is or becomes chargeable on any supply made by an Agent or a Lender to any party under any Loan Document and the such Agent or such Lender is required to account to the relevant tax authority for the VAT, that party must pay to such Agent or such Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and an Agent or Lender concerned must promptly provide an appropriate VAT invoice to that party).

(b) If VAT is or becomes chargeable on any supply made by an Agent or a Lender (the “Supplier”) to any Agent or any other Lender (the “Receiver”) under any Loan Document, and any party other than the Receiver (the “Relevant Party”) is required by the terms of any Loan Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Receiver in respect of that consideration):

(i) where the Supplier is the person required to account to the relevant tax authority for the VAT, the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The



Receiver must (where this Section 3.03(b)(i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Receiver receives from the relevant tax authority which the Receiver reasonably determines relates to the VAT chargeable on that supply; and

(ii) where the Receiver is the person required to account to the relevant tax authority for the VAT, the Relevant Party must promptly, following demand from the Receiver, pay to the Receiver an amount equal to the VAT chargeable on that supply but only to the extent that the Receiver reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

(c) Where any Loan Document requires any party to reimburse or indemnify any Agent or a Lender for any cost or expense, that party shall reimburse or indemnify (as the case may be) such Agent or such Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Agent or such Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(d) Any reference in Sections 3.03(a)-(d) to any party shall, at any time when such party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a party shall be construed as a reference to that party or the relevant group or unity (or fiscal unity) of which that party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).

(e) In relation to any supply made by a party to any other party under any Loan Document, if reasonably requested by such party, that other party must promptly provide such party with details of that other party's VAT registration and such other information as is reasonably requested in connection with such party's VAT reporting requirements in relation to such supply.

### 3.04 Illegality

(a) 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 Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) 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 Eurocurrency Rate 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 Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate 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 Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

(b) If, in any applicable jurisdiction, the Administrative Agent, the L/C Issuer or any Lender or any Designated Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the L/C Issuer or any Lender or its applicable Designated Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension to any Foreign Borrower, such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Loan Party, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Loan Party or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

### 3.05 Inability to Determine Rates

(a) If the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent that the Required Lenders have determined, that (i) by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for determining the Eurocurrency Rate for such Interest Period (and the circumstances described in Section 3.05(b) do not apply) or (ii) the Eurocurrency Rate for such requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders (as certified by such Lenders, which certification shall be conclusive absent manifest error) of making or maintaining their affected Loans during such Interest Period, then the Administrative Agent shall give

telecopy or telephonic notice thereof to the Lead Borrower and the relevant Lenders as soon as practicable thereafter. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower (on behalf of the Borrowers) may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, (A) with respect to a pending request for Loans denominated in Dollars, the Lead Borrower will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein and (B) with respect to Loans denominated in any Alternative Currency, at the election of the Lead Borrower, (1) such request shall be converted into a request for a Borrowing of Base Rate Loans denominated in Dollars (subject to the foregoing clause (y)) in the Dollar Equivalent of the amount specified therein (and, in the case of any outstanding Eurocurrency Rate Loans, regardless of whether such request is made, such Loans will automatically be deemed to be converted to Base Rate Loans denominated in Dollars in the Dollar Equivalent of such Loans at the end of the applicable Interest Period) or (2) the applicable Borrower shall repay such Eurocurrency Loans (to the extent outstanding) in full at the end of the applicable Interest Period; provided, however that if no such election is made by the Lead Borrower within three (3) days after receipt of such notice, the Lead Borrower shall be deemed to have elected clause (1) above.

(b) 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 Required Lenders notify the Administrative Agent that the Required Lenders (as applicable) have determined, that:

- (i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or
- (ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, 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 LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or
- (iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.05, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Lead Borrower may amend this Agreement or any other Loan Document solely for the purpose of replacing LIBOR in accordance with this Section 3.05 with (x) one or more SOFR-Based Rates, provided that any SOFR-Based Rate shall only apply to Loans in U.S. Dollars, or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar (or, with respect to the benchmark of another applicable currency, such applicable currency) denominated syndicated credit facilities for such alternative benchmarks 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 (or, with respect to the benchmark of another applicable currency, such applicable currency) denominated syndicated credit facilities for such benchmarks, 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 (the “Adjustment,” and any such proposed rate, a “LIBOR Successor Rate”), and 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 Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders (A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment; *provided* that for the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR 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 LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Lead Borrower.

(c) If no LIBOR Successor Rate has been determined and the circumstances under clause (a)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, (A) with respect to a pending request for Loans denominated in Dollars, the Lead Borrower will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein and (B) with respect to Loans denominated in any Alternative Currency, at the election of the Lead Borrower, (1) such request shall be converted into a request for a Borrowing of Base Rate Loans denominated in Dollars (subject to the foregoing clause (y)) in the Dollar Equivalent of the amount specified therein (and, in the case of any outstanding Eurocurrency Loans, regardless of whether such request is made, such Loans will automatically be deemed to be converted to Base Rate Loans denominated in Dollars in the Dollar Equivalent of such Loans at the end of the applicable Interest Period) or (2) the applicable Borrower shall repay such Eurocurrency Loans (to the extent outstanding) in full at the end of the applicable

Interest Period; provided, however that if no such election is made by the Lead Borrower within three (3) days after receipt of such notice, the Lead Borrower shall be deemed to have elected clause (1) above.

(d) Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

(e) In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate 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 LIBOR Successor Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

### 3.06 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 (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any Tax with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for (A) any Indemnified Taxes or Other Taxes, which are covered by Section 3.01, (B) any taxes relating to the U.K. Facility or the German Facility covered by Section 3.02 (or which would have been covered by Section 3.02 but were not covered solely because any of the exclusions in paragraph (iv) of Section 3.02(I) or paragraph (iv) of Section 3.02(II)) (C) any Taxes described in clauses (b) through (f) of the definition of Excluded Taxes and (D) any Connection Income Taxes); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or Eurocurrency Rate 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 or maintaining any Eurocurrency Rate 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 Borrowers 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 in accordance with clause (c) below.

(b) Capital Requirements. If any Lender or the L/C Issuer reasonably 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 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 and liquidity), then from time to time the Borrowers 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 in accordance with clause (c) below.

(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 subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 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 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead 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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurocurrency Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Lead Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of



such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

### 3.07 Compensation for Losses

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers 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) (for purposes hereof, references to the Interest Period shall be deemed to include any relevant interest payment date or payment period for an Alternative Currency Loan);

(b) any failure by the Borrowers (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 Lead Borrower; or

(c) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.14;

excluding any loss of anticipated profits or Applicable Rate, but including any other 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 Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.07, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded. Notwithstanding the foregoing, each Lender party hereto on the Third Restatement Date waives any compensation that would otherwise be due to such Lender as a result of this Section 3.07 from the transactions to occur on the Third Restatement Date.

### 3.08 Mitigation Obligations; Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.06, or the Borrowers are required to pay any additional amount 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 Section 3.02, or if any Lender gives a notice pursuant to Section 3.04, then 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, 3.02 or 3.06, as the case may be, in the future, or eliminate the

need for the notice pursuant to Section 3.04, 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 disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable 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 3.06, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.02, the Borrowers may replace such Lender in accordance with Section 11.14.

### 3.09 Survival

All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

### 3.10 Designation of Lead Borrower as Borrowers' Agent

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent and attorney-in-fact to (i) obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement, (ii) to provide Administrative Agent with all other notices with respect to Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (iii) to take such action as the Lead Borrower deems appropriate on their behalf to obtain Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Loan Documents. As the disclosed principal for its agent, each Borrower shall be obligated to each Secured Party on account of Credit Extensions so made to it as if made directly by the applicable Person to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents. Such appointment shall remain in full force and effect unless and until Administrative Agent shall have received prior written notice signed by each Borrower and each other Loan Party that such appointment has been revoked and that another Borrower has been appointed Lead Borrower.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit Extension. Neither the Administrative Agent, nor any other Secured Party shall have any obligation to see to the application of such proceeds therefrom.

(d) Each Lender and Administrative Agent agree to provide all notices hereunder to the Lead Borrower, and each Borrower agrees that notices delivered to the Lead Borrower shall be deemed to have been delivered to all Borrowers simultaneously.

#### **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 or waiver in accordance with Section 11.01 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 Third Restatement Date (or, in the case of certificates of governmental officials, a recent date before the Third Restatement Date):

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrowers, unless otherwise agreed;

(ii) a Note executed by the Borrowers in favor of Bank of America and each other Lender requesting a Note;

(iii) the Ancillary Document Confirmations;

(iv) completed requests for information, dated on or before the date of the initial Credit Extension, listing all other effective financing statements filed in all jurisdictions that the Administrative Agent may deem necessary in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement that name any Loan Party as debtor, together with copies of such financing statements as have been filed since the Original Closing Date;

(v) [reserved];

(vi) a certificate of an authorized officer of each Loan Party, attaching: (a) either (x) a copy of the articles or certificate of incorporation of such Loan Party certified as of a recent date by the Secretary of State of the state of organization (or comparable official in the United Kingdom and Canada) of such Loan Party or (y) a certification by a Responsible Officer of such Loan Party that no changes have been made to such articles or certificate since they were last provided to the Administrative Agent, in either case, together with certificates of such official attesting to the valid existence, good standing and qualification to engage in business in such Loan Party's jurisdiction of organization; (b) either (x) the bylaws or operating agreement (or equivalent such constitutional document), as applicable, of such Loan Party as in effect on the date of such certification or (y) a certification by a Responsible Officer of such Loan Party that no changes have been made to such bylaws or

operating agreement since they were last provided to the Administrative Agent; and (c) such certificates of resolutions or other action, incumbency and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may 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;

(vii) a favorable opinion of Ropes & Gray 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, in form and substance reasonably satisfactory to the Administrative Agent;

(viii) a favorable opinion of local counsel to the Loan Parties in each jurisdiction of organization of any Loan Party requested by the Administrative Agent, 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, in form and substance reasonably satisfactory to the Administrative Agent;

(ix) the Security Agreement, duly executed by each Loan Party;

(x) [reserved];

(xi) a certificate, substantially in the form of Exhibit K, signed by a Responsible Officer of the Lead 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, either individually or in the aggregate, a Material Adverse Effect that is continuing on the Closing Date;

(xii) a certificate, substantially in the form of Exhibit L, from Holdings attesting to the Solvency of the Loan Parties and their Subsidiaries on a consolidated basis before and after giving effect to the Transaction, from its chief financial officer or other Responsible Officer;

(xiii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or any Lender reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Third Restatement Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Third Restatement Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent required to be paid on the Third Restatement Date and invoiced at least one (1) Business Day prior to or on the Third Restatement Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(d) (i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Third Restatement Date, the Borrowers 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 Act, in each case at least three (3) days prior to the Third Restatement Date, and (ii) at least three (3) days prior to the Third Restatement Date, any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower.

(e) The Administrative Agent shall have received evidence in form and substance reasonably satisfactory to the Administrative Agent that all action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken.

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 Third Restatement Date specifying its objection thereto.

#### 4.02 Conditions to all Credit Extensions

Subject to the limitations applicable to Limited Condition Transactions, the obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Loan Party 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 be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively; provided that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on such respective dates.

(b) No Event of 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 Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Lead 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**

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

### **5.01      Existence, Qualification and Power**

Each Loan Party and each of its Subsidiaries (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 consummate the Transaction, 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) (with respect to Subsidiaries that are not Loan Parties), (b)(i) or (c), to the extent that failure to do so could 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 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 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 Law; except in each case referred to in clause (b) or (c), to the extent that such conflict, breach or violation could 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 (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the



perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) those which have been duly obtained, taken, given or made and are in full force and effect, (ii) those required under agreements that a Loan Party is permitted to execute pursuant to this Agreement, (iii) those required by applicable law or regulation, and (iv) those the failure of which to be obtained would not reasonably be expected to have 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, except as may be limited by Debtor Relief Laws or by 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 Borrowers and their Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) except as disclosed in Schedule 5.05, show all material indebtedness and other liabilities, direct or contingent, of the Borrowers and their Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of Holdings and its Subsidiaries dated September 27, 2019, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (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 Holdings and its Subsidiaries as of the date thereof and their results of operations 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.

(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 a Material Adverse Effect that is continuing.

(d) The consolidated pro forma balance sheet of Holdings and its Subsidiaries as at September 27, 2019, and the related consolidated pro forma statements of income and cash flows of the Borrowers and their Subsidiaries for the nine (9) months then ended, certified by the chief financial officer or treasurer of the Lead Borrower, copies of which have been furnished to each



Lender, fairly present in all material respects the consolidated pro forma financial condition of Holdings and its Subsidiaries as at such date and the consolidated pro forma results of operations of Holdings and its Subsidiaries for the period ended on such date, in each case giving effect to the Transaction, all in accordance with GAAP.

(e) The consolidated forecasted balance sheet, and statements of income and cash flows of Holdings and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01(c) were prepared in good faith based upon assumptions that are believed by the Lead Borrower to be reasonable at the time such consolidated forecasted balance sheet, and statements of income and cash flows were delivered to the Administrative Agent, it being understood that (i) such forecasts are not to be viewed as facts, (ii) such forecasts are subject to significant uncertainties and contingencies, many of which are beyond the Lead Borrower's control, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

#### 5.06 Litigation

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any of their Subsidiaries or against any of their properties or revenues that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

#### 5.07 No Default

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### 5.08 Ownership of Property; Investments

(a) Each Loan Party and each of its Subsidiaries 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 Liens permitted by the Loan Documents and such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries, showing as of the Third Restatement Date the street address, state, record owner and estimated fair value thereof. Except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents.

(c) Schedule 5.08(c) sets forth a complete and accurate list of all leases of real property under which any Loan Party is the lessee as of the Third Restatement Date, showing as of the Third Restatement Date, the street address, state and lessee.

(d) Schedule 5.08(d) sets forth a complete and accurate list of all Investments (other than Investments of the type permitted under Section 7.03 that are not subject to any “dollar” basket) held by any Loan Party or any Subsidiary of a Loan Party on the Third Restatement Date, showing as of the Third Restatement Date the amount, obligor or issuer and maturity, if any, thereof.

#### 5.09 Environmental Compliance

(a) Except as otherwise set forth in Schedule 5.09 or as could not reasonably be expected to have a Material Adverse Effect, the Borrowers and their Subsidiaries operate their respective businesses and properties in material compliance with Environmental Laws and Environmental Permits and none of the Borrowers or their Subsidiaries are subject to Environmental Liability that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.09 or as could not reasonably be expected to have a Material Adverse Effect, (i) none of the properties currently or, to the knowledge of any Borrower, formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) to the knowledge of any Borrower, there are and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the knowledge of any Borrower, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries that, in either case would require any material reporting, investigation, assessment, remediation or response action; (iii) there is no friable asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries that is not being maintained in material compliance with applicable Environmental Laws or requires abatement or removal; and (iv) Hazardous Materials have not been released, discharged or disposed of on any property currently or to the knowledge of any Borrower formerly owned or operated by any Loan Party or any of its Subsidiaries in a manner or quantity that would require any material reporting, investigation, assessment, remediation or response action.

(c) Except as otherwise set forth on Schedule 5.09 or as could not reasonably be expected to have a Material Adverse Effect, neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any material investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner that could not reasonably be expected to result in material liability to any Loan Party or any of its Subsidiaries.

## 5.10 Insurance

The properties of the Borrowers and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Borrower, in such amounts 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 applicable Borrower or the applicable Subsidiary operates.

## 5.11 Taxes

Holdings and its Subsidiaries have filed all foreign, Federal and state income tax returns and reports and other material tax returns and reports required to be filed, and have paid all foreign, Federal and state income taxes and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those 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 as could not reasonably be expected to have a Material Adverse Effect.

## 5.12 ERISA Compliance

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan (other than a Multiemployer Plan) is in compliance in all respects with the applicable provisions of ERISA, the Code and other Federal or state Laws and (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, where there is no determination letter but the Pension Plan is based upon a master and prototype or volume submitter form, the sponsor of such form has received a current advisory opinion as to the form upon which any Borrower or any ERISA Affiliate is entitled rely under applicable Internal Revenue Service procedures), or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of any 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 any Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan (other than any Multiemployer Plan) that could reasonably be expected to have a Material Adverse Effect. To the best knowledge of any Borrower, there are no pending or threatened claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect. To the best knowledge of any Borrower, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred with respect to any Pension Plan, (ii) to the best knowledge of any Borrower, no ERISA Event has occurred with respect to any Multiemployer

Plan, (iii) no 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; (iv) each Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (v) neither any Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (vi) neither any 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; and (vii) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, except with respect to each of the foregoing clauses of this Section 5.12(c), as could not reasonably be expected, individually or in the aggregate, to result in liability in excess of the Threshold Amount.

(d) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a “Foreign Plan”), as of the later of (x) the date of the Audited Financial Statements and (y) the most recent audited financial statements delivered pursuant to Section 6.01(a), except as could not reasonably be expected, individually or in the aggregate, to result in liability in excess of the Threshold Amount:

any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(e) as of the Third Restatement Date, the Borrowers are not and will not be using “plan assets” (within the meaning of Section 3(42) of ERISA) with respect to the Borrowers’ entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

#### 5.13 Subsidiaries; Equity Interests; Loan Parties

As of the Third Restatement Date (or the date of any supplements delivered pursuant to Section 6.12(a)(i)), no Loan Party has any 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 non-assessable (to the extent such concept is applicable) and are owned by a Loan Party or another Subsidiary in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. No Loan Party has any equity investments in any other corporation or entity as of the Third Restatement Date (or the date of any supplements delivered pursuant to Section 6.12(a)(i)) other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in each Borrower have been validly issued, are fully paid and non-assessable (to the extent such concept is applicable) and are owned by Holdings free and clear of all Liens except those created under the Collateral Documents. Set forth on Part (c) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Third Restatement Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. As of the Third Restatement Date, the copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a) (or pursuant to Section 4.01(a) of the Existing Credit Agreement, as applicable) is a true and correct copy of each such document, each of which is valid and in full force and effect.

#### 5.14 Margin Regulations; Investment Company Act

(a) No Borrower is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock or any margin security (within the meanings of Regulation U and Regulation T, respectively, issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party or Person Controlling any Loan Party is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

#### 5.15 Disclosure

No material written information, other than forecasts which are the subject of Section 5.05(e), other information of a forward-looking nature and information of a general economic or industry specific nature, furnished 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) when taken as a whole 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 forecasts which are the subject of Section 5.05(e), the Borrowers make only the representations set forth in Section 5.05(e).

#### 5.16 Compliance with Laws

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all 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, could not reasonably be expected to have a Material Adverse Effect.

#### 5.17 Intellectual Property; Licenses, Etc.

Except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights and other intellectual property rights (such ownership or right to use, collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses. Set forth on Schedule 5.17 is a complete and accurate list of all such IP Rights registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by each Loan Party as of the Third Restatement Date. Except for such claims and infringements asserted or pending that could not reasonably be expected to have a Material Adverse Effect, no claim has been asserted and is pending against any Loan Party by any Person challenging or questioning the use of any of such Loan Party’s IP Rights or the validity or enforceability of any of such Loan Party’s IP Rights, nor does any Loan Party know of any such claim, and, to the knowledge of any Borrower, the use of any IP Rights (including the licensing of any such IP Rights) by any Loan Party or any of its Subsidiaries does not infringe on the rights of any Person. As of the Third Restatement Date, none of the material IP Rights of any Loan Party or any of its Subsidiaries is subject to any licensing agreement or similar arrangement to which such Loan Party is party other than (i) non-exclusive licenses granted in the ordinary course of business and (ii) as set forth on Schedule 5.17.

#### 5.18 Solvency

The Loan Parties, on a consolidated basis together with their Subsidiaries, are Solvent.

#### 5.19 [Reserved]

#### 5.20 Labor Matters

There are no collective bargaining agreements or Multiemployer Plans covering the employees of any Borrower or any of their Subsidiaries as of the Third Restatement Date and neither any Borrower nor any Subsidiary is subject to any strikes, walkouts, work stoppages or other labor difficulty that could reasonably be expected to have a Material Adverse Effect.

#### 5.21 Collateral Documents

The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings and other actions completed on or prior to the Third Restatement Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect such Liens, to the extent the Collateral Documents require perfection thereof.



## 5.22 Subordination of Permitted Subordinated Debt

The Obligations are “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any documentation governing Permitted Subordinated Debt.

## 5.23 OFAC

None of the Loan Parties, nor any of their respective Subsidiaries, 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 any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) operating, organized or resident in a Designated Jurisdiction.

## 5.24 Anti-Corruption Laws

The Loan Parties and their respective Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions in which the Loan Parties or their Subsidiaries are operating, organized or resident and applicable Sanctions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions.

## 5.25 Beneficial Ownership Certification

As of the Third Restatement Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

## 5.26 EEA Financial Institutions

No Loan Party is an EEA Financial Institution.

## 5.27 Covered Entities

No Loan Party is a Covered Entity.

# **ARTICLE VI. AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (A) in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations in each case with respect to which no claim has been made and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding under this Agreement (except to the extent Cash Collateralized), each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:



## 6.01 Financial Statements

Deliver to the Administrative Agent:

(a) within 90 days after the end of each fiscal year of Holdings (commencing with the fiscal year ending December 31, 2019), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of Pricewaterhouse Coopers LLP or another independent certified public accountant of nationally recognized standing, 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 (other than with respect to, or resulting from an upcoming maturity date with respect to any Indebtedness of any Loan Party (including Indebtedness under this Agreement) occurring within one year from the time such report and opinion are delivered);

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings (commencing with the fiscal quarter ending April 3, 2020), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of Holdings' fiscal year then ended, setting forth in each case in comparative form 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 a Responsible Officer of Holdings as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows Holdings and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) within 60 days after the end of each fiscal year of Holdings (commencing with the fiscal year ending December 31, 2019), an annual business plan and budget of Holdings and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Lead Borrower of consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Subsidiaries on a quarterly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date for the Term Facility occurs), in the form prepared for the board of directors of the Lead Borrower.

The obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information by furnishing Holdings' Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that if Holdings is no longer filing such forms, the financial information delivered pursuant to paragraphs (a) and (b) must be in form and detail consistent with financial information previously delivered or otherwise reasonably satisfactory to the Administrative Agent and the Required Lenders.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrowers shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but

the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02 Certificates; Other Information

Deliver to the Administrative Agent and each Lender:

- (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 year ending December 31, 2019), a duly completed Compliance Certificate signed by a Responsible Officer of Holdings;
- (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 any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, 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 Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;
- (d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement, in each case, with respect to Indebtedness for borrowed money in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;
- (e) within 30 days after the end of each fiscal year of Holdings, current certificates of property and liability insurance, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;
- (f) promptly, and in any event within five Business Days 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;
- (g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against any Loan Party or any of its Subsidiaries of any liability under Environmental Law or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any material restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(h) within 90 days after the end of each fiscal year of Holdings (commencing with the fiscal year ended December 31, 2020), (i) a report supplementing Schedules 5.08(b) and 5.08(c), including an identification of all owned and leased real property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, state, record owner, and, in the case of leases of property, lessee thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedule 5.17, setting forth (A) a list of registration numbers for all patents, trademarks, service marks and copyrights awarded by the United States Copyright Office or the United States Patent and Trademark Office to any Loan Party or any Subsidiary thereof during such fiscal year and (B) a list of all patent applications, trademark applications, service mark applications and copyright applications submitted by any Loan Party or any Subsidiary thereof to the United States Copyright Office or the United States Patent and Trademark Office during such fiscal year and the status of each such application; and (iii) a report supplementing Schedules 5.08(d) and 5.13 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; and

(i) promptly, (A) to the extent permitted by (i) the confidentiality provisions of any agreement applicable to any Loan Party or any Subsidiary thereof, or (ii) any applicable attorney-client privilege, 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 and (B) 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 the Act and the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead 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 Borrowers’ 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); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Lead Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks or another similar electronic 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 Borrowers or their 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 Borrowers hereby agree that so long as the Borrowers are the issuers of any outstanding debt or equity securities that are registered or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials 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 Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States Federal and state securities laws (provided, however, 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 Arrangers 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.”

#### 6.03      Notices

(a)          Promptly notify the Administrative Agent and each Lender of the occurrence of any Default;

(b)          Promptly (and in any event, within five Business Days of any Borrower's knowledge thereof) notify the Administrative Agent and each Lender of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including to the extent it has resulted or could reasonably be expected to result in a Material Adverse Effect, the following: (i) breach or non-performance of, or any default under, a Contractual Obligation of any Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c)          Promptly (and in any event, within five Business Days of any Borrower's knowledge thereof) notify the Administrative Agent and each Lender of (i) the occurrence of any ERISA Event, or (ii) if any Borrower or any ERISA Affiliate is notified that any Pension Plan or Multiemployer Plan to which any Borrower or any ERISA Affiliate contributes, or for which any Borrower or ERISA Affiliate has any liability or contingent liability, is considered to be an “at-risk” plan or a plan in “endangered” or “critical” status within the meaning of Sections 430, 431, or 432 of the Code, or Sections 303, 304 or 305 of ERISA; and

(d) Promptly notify the Administrative Agent and each Lender of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof, including any determination by the Lead Borrower referred to in Section 2.10(b).

Each notice pursuant to Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead 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 Taxes

Pay and discharge as the same shall become due and payable all tax liabilities, assessments and governmental charges or levies 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 such Borrower or such Subsidiary, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence except in a transaction permitted by Section 7.04 or 7.05; (a) preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its, except to the extent the failure to do so by a Subsidiary that is not a Guarantor could not reasonably be expected to have a Material Adverse Effect; (c) 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 could 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; and (b) make all necessary repairs thereto and renewals and replacements thereof, in each case of clause (a) or (b), 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 any 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 as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' (or 10 days' in the case of non-payment) prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, to the extent the Administrative Agent can be granted an insurable interest therein.

#### 6.08 Compliance with Laws

Comply in all material respects with the requirements of all 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 a manner sufficient to prepare financial statements in accordance with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

#### 6.10 Inspection Rights

Permit, to the extent permitted by (i) the confidentiality provisions of any agreement applicable to any Loan Party or any Subsidiary thereof, or (ii) any applicable attorney-client privilege, representatives and independent contractors of the Administrative Agent and each Lender 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 Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, that an officer of the Lead Borrower shall be provided reasonable opportunity to participate in any such discussion with the accountants; provided further such inspections shall be coordinated through the Administrative Agent so that in the absence of an Event of Default, not more than one such inspection shall occur in any calendar year. Notwithstanding the foregoing, when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

#### 6.11 Use of Proceeds

Use the proceeds of the Credit Extensions (i) for working capital, capital expenditures, Permitted Acquisitions and other transactions permitted under Section 7.03 and general corporate purposes not in contravention of any Law or of any Loan Document and (ii) to refinance indebtedness existing under the Existing Credit Agreement.

#### 6.12 Covenant to Guarantee Obligations and Give Security

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary of Holdings (other than any Excluded Subsidiary) by any Loan Party, or any Subsidiary that was formerly an Excluded Subsidiary becoming a Subsidiary that is not an Excluded Subsidiary (including in connection with the 2019 Corporate Restructuring Transactions), then the Borrowers shall, at the Borrowers' expense:



(i) within thirty (30) days after such formation or acquisition, cause such Subsidiary, along with all of its Subsidiaries that are not Excluded Subsidiaries, to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement in the form of Exhibit F-1, guaranteeing the other Loan Parties' obligations under the Loan Documents; provided that if any such Subsidiary is a direct Subsidiary of Holdings (other than an Excluded Subsidiary), such Subsidiary shall become a Borrower under this Agreement pursuant to an assumption agreement reasonably acceptable to the Administrative Agent,

(ii) within thirty (30) days after such formation or acquisition, furnish to the Administrative Agent a description of the real and personal properties of each such Subsidiary, in reasonable detail,

(iii) within thirty (30) days after such formation or acquisition, cause each such Subsidiary to (x) duly execute and deliver to the Administrative Agent, Security Agreement Supplements, IP Security Agreement Supplements (only with respect to any U.S. registrations and applications for registration of IP Rights included in the Collateral and excluding any "intent to use" trademark or service mark applications) (including delivery of all Pledged Interests in and of each such Subsidiary, and other security and pledge agreements but not with respect to any Excluded Assets (as defined in the Security Agreement), securing payment of all the Obligations of each such Subsidiary under the Loan Documents and constituting Liens on all such real and personal properties and (y) take whatever action (including the filing of Uniform Commercial Code financing statements and the giving of notices) may be necessary or advisable in the opinion of, and requested by, the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Security Agreement Supplements, IP Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(iv) within sixty (60) days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters as the Administrative Agent may reasonably request,

(v) within ninety (90) days after such formation or acquisition, cause each such Subsidiary to (x) if any such Person owns any Material Properties, duly execute and deliver deeds of trust, trust deeds, deeds to secure debt, and mortgages, and (y) take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of, and requested by, the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,



(vi) as promptly as practicable after such formation or acquisition, deliver, upon the request of the Administrative Agent in its reasonable discretion, to the Administrative Agent with respect to each Material Property owned by the entity that is the subject of such formation or acquisition title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such Material Property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

Notwithstanding the foregoing, the Administrative Agent and the Lenders hereby agree that, at the Lead Borrower's election, the foregoing requirements may be satisfied with respect to Novanta Medical Technologies Corp., Laser Quantum Inc. and/or W.O.M. World of Medicine USA Inc. on or prior to the Third Restatement Date.

(b) Upon the acquisition of any Material Property by any Loan Party, if such property, in the judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties, then the Borrowers shall, at the Borrowers' expense:

(i) within thirty (30) days after such acquisition, furnish to the Administrative Agent a description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) within ninety (90) days after such acquisition, cause the applicable Loan Party to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties,

(iii) within ninety (90) days after such acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters as the Administrative Agent may reasonably request,

(iv) within ninety (90) days after such acquisition, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, and mortgages in form and substance reasonably satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties, and

(v) as promptly as practicable after such acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, such real property title reports, environmental assessment reports, surveys, appraisals,

flood zone certificates, evidence of compliance with zoning requirements and other reports and documents, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(c) Promptly after delivering supplements to the Administrative Agent delivered pursuant to Section 6.02(h), where applicable, deliver deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, or IP Security Agreement Supplements executed by the applicable Loan Party.

#### 6.13 Compliance with Environmental Laws

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that no Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that (a) its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP or (b) failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 6.14 Further Assurances

Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests (other than Excluded Assets (as defined in the Security Agreement)) to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party.

## 6.15 Post-Closing Obligations

Take the actions specified in Schedule 6.15 as promptly as reasonably practicable, and in any event within the periods after the Third Restatement Date specified in Schedule 6.15 (as such time periods may be extended by the Administrative Agent in its sole discretion). The provisions of Schedule 6.15 shall be deemed incorporated by reference herein as fully as if set forth herein in their entirety.

## 6.16 Anti-Corruption Laws

Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, other similar anti-corruption legislation in other jurisdictions in which the Loan Parties or their Subsidiaries are operating, organized or resident and applicable Sanctions and maintain policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions.

# ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (A) in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations in each case with respect to which no claim has been made and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit under this Agreement (except to the extent Cash Collateralized) shall remain outstanding, the Loan Parties shall not, nor shall they 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 5.08(b) and any replacement, renewals or extensions thereof and, to the extent any Indebtedness underlying such Liens is refinanced, Liens securing Refinancing Indebtedness in respect thereof, provided that (i) the property covered thereby is not changed and (ii) the amount secured or benefited thereby is not increased except as permitted by Section 7.02(d);

(c) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable (other than under ERISA) or delinquent and Liens (other than Liens under ERISA) for taxes, assessments or governmental charges or levies 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) Liens created in the ordinary course of business and described in any of the following clauses:

- (i) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business;
- (ii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (iii) 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;
- (iv) Liens on deposits to secure liability for premiums to insurance carriers or securing insurance premium financing arrangements entered into in the ordinary course of business;
- (v) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods;
- (vi) Liens in favor of Cash Management Banks securing Cash Management Agreements;
- (vii) Liens of a collecting bank under Section 4-208 of the UCC covering only the items being collected upon; and
- (viii) Liens that are licenses of IP Rights granted by any Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Loan Parties;

provided that the Liens described in any such clause (A) do not materially detract from the value of the property of the Loan Parties, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Loan Parties, taken as a whole and (B) if they secure obligations that are then due and unpaid by more than thirty (30) days, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

- (e) the filing of UCC financing statements in connection with operating leases or consignment of goods;
- (f) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which do not materially interfere with the ordinary conduct of the business of the applicable Person;
- (g) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and in connection with Investments not otherwise prohibited by this Agreement; provided that such Liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course and in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing or otherwise;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and improvements thereon and accessions thereto and (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; provided however that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender or its Affiliates;

(j) Liens securing Indebtedness permitted under Section 7.02(i); and

(k) the replacement, extension or renewal of any Lien permitted by clause (j) above or clause (l) below and, to the extent any Indebtedness underlying such Liens is refinanced, Liens securing Refinancing Indebtedness in respect thereof; provided that (i) the property covered thereby is not changed and (ii) the amount secured or benefitted thereby is not increased except as permitted by Section 7.02(d);

(l) Liens on property of a Person existing at the time such property is acquired pursuant to a Permitted Acquisition or Investment permitted hereunder in each case after the Third Restatement Date; provided that such Liens (i) do not extend to property not subject to such Liens at the time of acquisition (other than improvements thereon and accessions thereto), (ii) are not created in anticipation or contemplation of such acquisition, merger or consolidation and (iii) the Indebtedness secured thereby is permitted under Section 7.02;

(m) Liens on any cash earnest money deposits made by a Loan Party in connection with any letter of intent or purchase agreement entered into with respect to a Permitted Acquisition or other Investment not otherwise prohibited by this Agreement or otherwise in connection with any escrow arrangements with respect to any Permitted Acquisition, Investment or Disposition not prohibited hereunder, or consisting of an agreement to dispose of any property in a Disposition not prohibited hereunder;

(n) leases of the properties of any Loan Party, in each case entered into in the ordinary course of such Loan Party's business so long as such leases do not, individually or in the aggregate, interfere in any material respect with the ordinary conduct of the business of any Loan Party;

(o) Landlords' and lessors' Liens in respect of rent and other lease obligations that are not past due by 90 days or which are being contested in good faith for which adequate reserves have been established in accordance with GAAP, which proceedings (or court orders entered into in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(p) Liens granted to Hedge Banks in respect of Swap Contracts permitted under Sections 7.02(h);

(q) Liens on insurance policies and the proceeds thereof securing the financing of premiums with respect thereto;

(r) Liens on cash and Cash Equivalents used to defease, redeem, satisfy and/or discharge Indebtedness; provided such defeasance, redemption, satisfaction and/or discharge is not prohibited hereunder; and

(s) other Liens affecting property with an aggregate fair value not to exceed \$10,000,000, provided that no such Lien shall extend to or cover any Collateral.

For the avoidance of doubt, Liens permitted in this Section 7.01 that secure any Indebtedness or other obligation of any other Person, whether or not such obligation is assumed by such Loan Party or such Subsidiary (or any right, contingent or otherwise, of any such Person holding such obligation to obtain any such Lien) shall only be permitted to the extent that the Guarantee (as determined under clause (b) of the definition of “Guarantee”) would be permitted under Section 7.02.

## 7.02 Indebtedness

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of Holdings or any of its Subsidiaries owed to Holdings or a wholly-owned Subsidiary of Holdings, which Indebtedness shall (i) in the case of Indebtedness owed to a Loan Party, constitute “Pledged Debt” under the Security Agreement, (ii) be subordinated in rights of payment to the Obligations and (iii) be otherwise permitted under the provisions of Section 7.03;

(b) Indebtedness under the Loan Documents;

(c) Indebtedness outstanding on the date hereof and listed on Schedule 7.02;

(d) Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, defease, discharge, renew or replace Indebtedness incurred pursuant to Sections 7.02(c), (d), (f), (g), (i), (j), (k), (n) and (o) (“Refinanced Indebtedness”); provided that:

(i) the amount of such Refinanced Indebtedness is not increased at the time of such refinancing, refunding, renewal, extension or replacement except by an amount equal to a premium or other amounts paid, penalties and accrued and unpaid interest paid thereon and fees, including any closing fees and original issue discount and expenses reasonably incurred, in connection with such refinancing, refunding, renewal, extension or replacement and by an amount equal to any existing commitments unutilized thereunder,

(ii) the direct or any contingent obligor with respect to such Refinanced Indebtedness is not changed, as a result of or in connection with such refinancing, refunding, renewal, extension or replacement,

(iii) the terms relating to principal amount, amortization, collateral (if any) and subordination (if any), and other material terms of any such refinancing, refunding, renewing, extending or replacing Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are, taken as a whole and determined in good faith by a Responsible Officer of the Lead Borrower to be, no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Refinanced Indebtedness and the interest rate applicable to any such refinancing, refunding, renewing, extending or replacing Indebtedness does not exceed the then applicable market interest rate,

(iv) such refinancing, refunding, renewing, extending or replacing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, and

(v) in the case of Refinanced Indebtedness replacing Permitted Subordinated Debt, the holder must execute a subordination agreement in substantially the same form as any existing subordination agreement;

(e) Guarantees of Holdings or any of its Subsidiaries in respect of Indebtedness otherwise permitted hereunder of any Borrower, which Guarantees shall be otherwise permitted by Section 7.03, or in respect of operating leases and similar obligations not constituting Indebtedness;

(f) Purchase Money Indebtedness and Attributable Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness (other than in respect of Capitalized Leases for real property (if capitalization of such leases arises under GAAP)) at any one time outstanding shall not exceed \$20,000,000;

(g) Indebtedness of any Person that becomes a Subsidiary of Holdings after the date hereof pursuant to a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of Holdings (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of Holdings);

(h) obligations (contingent or otherwise) 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 fluctuations in interest rates, currency exchange rates or commodity prices 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;

(i) Indebtedness arising from agreements of Holdings or any of its Subsidiaries providing for indemnification, hold backs adjustment of purchase price or similar obligations (including earn-outs), non-compete agreements, deferred compensation or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds, in each case entered into in connection with Permitted Acquisitions, other Investments or Dispositions permitted by this Agreement;



(j) Permitted Subordinated Debt; so long as both immediately prior and after giving effect thereto, (A) no Default shall exist or result therefrom and (B) after giving Pro Forma Effect to such incurrence of Indebtedness, Holdings and its Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.10;

(k) Indebtedness assumed in connection with any Permitted Acquisition; provided that such Indebtedness is not incurred in contemplation of such Permitted Acquisition and so long as both immediately prior and after giving effect thereto, (A) no Default shall exist or result therefrom and (B) after giving Pro Forma Effect to such assumption of Indebtedness, Holdings and its Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.10;

(l) Indebtedness consisting of promissory notes issued by any Borrower, Holdings or any Subsidiary of Holdings to current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) to finance the purchase or redemption of Equity Interests of Holdings permitted under Section 7.06(d);

(m) Indebtedness incurred in the ordinary course of business in respect of,

(i) Cash Management Agreements with Cash Management Banks and in connection with securities and commodities accounts,

(ii) overdraft facilities, employee credit card programs, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements with respect to Foreign Subsidiaries,

(iii) performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees, return of money and similar obligations not in connection with money borrowed, including those incurred to secure health, safety and environmental obligations,

(iv) the endorsement of instruments for deposit or the financing of insurance premiums,

(v) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services,

(vi) deferred compensation or similar arrangements to employees of Holdings, any Subsidiary of Holdings or any direct or indirect parent thereof, entered into in the ordinary course of business or in connection with a Permitted Acquisition, and

(vii) obligations to pay insurance premiums (including relating to any financing thereof) or take or pay obligations contained in supply agreements, and obligations in respect of self-insurance;

(n) other unsecured Indebtedness of the Loan Parties; so long as, after giving Pro Forma Effect to such incurrence of Indebtedness, Holdings and its Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.10; and

(o) other Indebtedness of Subsidiaries that are not Loan Parties in an aggregate principal amount not to exceed \$50,000,000 at any time outstanding.

Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.02.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-denominated equivalent amount of the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar-denominated equivalent amount), in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 7.02.

### 7.03 Investments

Make or hold any Investments, except:

(a) Investments held by Holdings and its Subsidiaries in the form of cash or Cash Equivalents and Investments that were cash or Cash Equivalents when made;

(b) Advances to officers, directors and employees of Holdings and its Subsidiaries in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by Holdings and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by Holdings and its Subsidiaries in Loan Parties (other than Holdings), (iii) additional Investments by Subsidiaries that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) additional Investments by the Loan Parties in wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount invested at any one time outstanding not to exceed \$30,000,000;

(d) intercompany loans and advances to Holdings; provided that such intercompany loans and advances shall be unsecured and expressly subordinated in right of payment to the Obligations;

(e) Investments consisting of extensions of customer financing, 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;

(f) Investments by any Loan Party in Swap Contracts permitted under Section 7.02;

(g) Investments made as a result of the receipt of non-cash consideration from a Disposition in compliance with Section 7.05;

(h) Guarantees permitted by Section 7.02;

(i) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 5.08(e);

(j) the purchase or other acquisition (utilizing any combination of cash, Cash Equivalents and the issuance of Qualified Equity Interests) of all of the Equity Interests in, a majority of the Equity Interests in, or all or substantially all of the property of, any Person (or a division or business unit thereof) (the “Target”) that, upon the consummation thereof, will be wholly-owned directly by Holdings or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation) (a “Permitted Acquisition”), including Investments that are acquired in connection with a Permitted Acquisition; provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(j):

(i) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 6.12;

(ii) the lines of business of the Target shall not be substantially different from those lines of business conducted by Holdings and its Subsidiaries on the date hereof or any business substantially related or incidental thereto or a reasonable extension thereof;

(iii) such purchase or other acquisition shall be non-hostile in nature;

(iv) (A) immediately before and immediately after giving Pro Forma Effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing and (B) immediately after giving effect to such purchase or other acquisition, Holdings and its Subsidiaries shall be in Pro Forma Compliance with all of the covenants set forth in Section 7.10, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby; and

(v) the Lead Borrower shall have delivered to the Administrative Agent, at least five Business Days (or such later date agreed to by the Administrative Agent) prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in the form of Exhibit N, certifying that all of the requirements set forth in this clause (j) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(k) Investments of any Person that becomes a Subsidiary on or after the date hereof; provided that (i) such Investment exists at the time such Person is acquired and (ii) such Investment is not made in anticipation or contemplation of such Person becoming a Subsidiary;

(l) Investments in the form of loans to officers, directors and employees of any Loan Party or any Subsidiary of a Loan Party for the sole purpose of purchasing Equity Interests (or purchase of such loans made by others) in an amount by Loan Parties other than Holdings not to exceed \$2,000,000 at any time outstanding, so long as Holdings makes a capital contribution of the proceeds of any such purchase to the Borrowers, and payroll advances in the ordinary course of business;

(m) Investments made pursuant to a “rabbi trust” or similar employee benefit plan or arrangement designed to defer the taxability of compensation to an employee, officer or director or purchase payments made in connection with a Permitted Acquisition; and

(n) other Investments not exceeding \$50,000,000 in the aggregate in any fiscal year of the Lead Borrower, plus the net cash proceeds of all issuance or sales of Holdings or any Borrower’s Equity Interests or contributions to Holdings or any Borrower’s capital that were Not Otherwise Applied.

#### 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 Event of Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) any Borrower or Holdings, provided that the applicable Borrower or Holdings, as applicable, shall be the continuing or surviving Person or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with any Subsidiary that is not a Loan Party, such Loan Party shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Lead Borrower or to another Loan Party;

(c) 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 or (ii) to a Loan Party;

(d) in connection with any acquisition permitted under Section 7.03, any Subsidiary of Holdings (subject to clause 7.04(e) below) 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 Holdings (unless both parties to such merger were not wholly owned prior to the merger) and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person;

(e) so long as no Default has occurred and is continuing or would result therefrom, any Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Lead Borrower is a party, the Lead Borrower is the surviving corporation and (ii) in the case of any such merger to which any Loan Party (other than the Lead Borrower) is a party, such Loan Party is the surviving corporation;

(f) any merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05; and

(g) the Loan Parties and their respective Subsidiaries may consummate the 2019 Corporate Restructuring Transactions.

For the avoidance of doubt, the Lead Borrower shall always survive any such merger to which the Lead Borrower is a party.

#### 7.05 Dispositions

Make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business or property that is no longer useful or economically practicable to maintain;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions consisting of (i) licenses or sublicenses of IP Rights (including non-exclusive licenses of IP Rights) in the ordinary course of business and (ii) the abandonment or other disposition of IP Rights that is, in the reasonable good faith judgment of the Lead Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Loan Parties taken as a whole;

(d) Dispositions resulting from (i) takings pursuant to the power of eminent domain, condemnation or otherwise or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking or (ii) transfer of destroyed property to insurance companies in exchange for insurance proceeds;

(e) liquidations or sales of Cash Equivalents (or investments that were Cash Equivalents when made) for fair market value as determined in good faith by the Lead Borrower;

(f) Dispositions of equipment, leases or real property for fair market value as determined in good faith by the Lead Borrower, to the extent that (i) such equipment or real

property is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition of equipment or real property are reasonably promptly applied to the purchase price of such replacement property or (iii) such Dispositions of leases of real or personal property are in the ordinary course of business;

(g) the sale or discount by any Loan Party in each case without recourse and in the ordinary course of business of Receivables arising in the ordinary course of business, but only in connection with the compromise or collection thereof;

(h) mergers and consolidations consummated in compliance with Section 7.04, and Restricted Payments made in compliance with Section 7.06;

(i) Dispositions of property by Holdings or any Subsidiary to any Loan Party or any Subsidiary; provided that if the transferor of such property is a Loan Party, the transferee thereof must also be a Loan Party;

(j) Dispositions permitted by Section 7.04;

(k) Dispositions by Holdings and its Subsidiaries of the properties listed on Schedule 7.05 pursuant to sale-leaseback transactions for fair market value, provided that the Attributable Indebtedness incurred thereby is permitted under Section 7.02 and the Net Cash Proceeds of such Dispositions are applied as set forth in clauses (v) and (viii) of Section 2.05(b), subject to the reinvestment provisions of clause (i) of Section 2.05(b);

(l) Dispositions by Holdings or any of 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, (ii) such Disposition is at fair market value as determined in good faith by the Lead Borrower and (iii) at least 75% of the purchase price for such asset shall be paid to Holdings or such Subsidiary solely in cash or Cash Equivalents; provided that, for purposes of this provision, each of the following will be deemed to be cash: (x) any liabilities of any Loan Party or any Subsidiary that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases such Loan Party or such Subsidiary from further liability, (y) any securities, notes or other obligations received by any Loan Party or any Subsidiary from such transferee that are contemporaneously, subject to ordinary settlement periods, converted by any Loan Party or any Subsidiary into cash, to the extent of the cash received in that conversion and (z) Designated Non-Cash Consideration with an aggregate fair market value (determined at the time of receipt thereof) not exceeding \$5,000,000 at any time outstanding; provided, further, that the Net Cash Proceeds of such Disposition shall be applied pursuant to Section 2.05(b)(i);

(m) so long as no Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of Section 7.05(l);

(n) the Loan Parties and their respective Subsidiaries may consummate the 2019 Corporate Restructuring Transactions;

(o) Dispositions which are necessary to obtain approval from a competition regulator in connection with undertaking a Permitted Acquisition; and

(p) Dispositions constituting the surrender or waiver of contractual rights, or the settlement or waiver of contractual or litigation claims, in each case, in the ordinary course of business or otherwise if the Lead Borrower determines in good faith that such action is in the best interests of Holdings and its Subsidiaries, taken as a whole; and

(q) Dispositions of non-core assets acquired in connection with a Permitted Acquisition or other Investment made (or contractually committed to be made) within one (1) calendar year of the consummation of such Permitted Acquisition or other Investment; provided that the book value of such assets disposed of in reliance on this clause (q) shall not, with respect to any particular Permitted Acquisition or other Investment, exceed 25% of the book value of all assets acquired in connection with such Permitted Acquisition or other Investment.

Each of the Loan Parties covenants and agrees that it will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Administrative Agent may reasonably request to ensure that the Administrative Agent's Lien on any property transferred among Loan Parties pursuant to this Section 7.05 is perfected as against the transferee with the same priority as the Administrative Agent's Lien on such property when held by the transferor. To the extent the Required Lenders waive the provisions of this Section 7.05, with respect to the Disposition of any Collateral, or any Collateral is Disposed of as permitted by this Section 7.05, such Collateral shall be sold free and clear of the Liens created by the Collateral Documents, and the Administrative Agent shall take all actions it deems appropriate or are reasonably requested by the Lead Borrower, at the sole expense of the Borrowers, in order to effect the foregoing.

#### 7.06 Restricted Payments

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to any Loan Party and any other Person that owns a direct 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) Holdings, each Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Qualified Equity Interests of such Person;

(c) Holdings, each Borrower and each Subsidiary may purchase, redeem or otherwise acquire its Equity Interests with the net cash proceeds received from the substantially concurrent issue of new Qualified Equity Interests which are Not Otherwise Applied;

(d) so long as no Event of Default shall have occurred and be continuing or would result therefrom, any Borrower may make Restricted Payments to Holdings to enable Holdings to redeem or repurchase Equity Interests from officers, directors, employees or consultants of any Loan Party (or their Related Parties) in connection with the exercise of stock options, stock



appreciation rights or other equity incentives or equity based incentives pursuant to management incentive plans or in connection with the death or disability of such officers, directors, employees or consultants (including, for the avoidance of doubt, any principal and interest payable on notes issued under Section 7.02(k)); provided that in all such cases the aggregate amount paid in respect of all such shares so redeemed or repurchased does not exceed \$2,000,000 in the aggregate in any fiscal year (with unused amounts in any fiscal year rolled over to the succeeding fiscal years);

(e) Holdings, each Borrower and each Subsidiary may make repurchases of Equity Interests deemed to occur upon the exercise of stock options if such Equity Interests represent a portion of the exercise price thereof;

(f) Holdings, each Borrower and each Subsidiary may make payments on convertible debt permitted hereunder to the extent such payments are either made with Qualified Equity Interests (or the net cash proceeds of an issuance of Qualified Equity Interests which are Not Otherwise Applied) or would otherwise be permitted by Section 7.13;

(g) any Borrower may declare and pay cash dividends to Holdings (or a direct or indirect parent of Holdings) in an amount necessary to permit Holdings (or such parent) to pay:

(i) reasonable corporate and operating expenses (including reasonable out-of-pocket expenses for legal, administrative and accounting services provided by third parties, and compensation, benefits and other amounts payable to officers and employees in connection with their employment in the ordinary course of business and to board of director observers);

(ii) franchise fees or similar taxes and fees required to maintain its corporate existence; and

(iii) its (and its Subsidiaries') proportionate share of the tax liability of the affiliated group of corporations that file consolidated foreign or Federal income tax returns (or that file state and local income tax returns on a consolidated basis); and

(h) Holdings, each Borrower and each Subsidiary may make repurchases of their Equity Interests so long as (A) immediately before and immediately after giving Pro Forma Effect to any such repurchase, no Event of Default shall have occurred and be continuing and (B) immediately after giving effect to such repurchase, (x) Holdings and its Subsidiaries shall be in Pro Forma Compliance with all of the covenants set forth in Section 7.10, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such repurchase had been consummated as of the first day of the fiscal period covered thereby and (y) the Consolidated Leverage Ratio for the twelve month period ended as of the end of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or (b) shall be no more than (i) 3.25 : 1.00 or (ii) 3.75 : 1.00, for the four consecutive quarters following a Designated Acquisition.

#### 7.07 Change in Nature of Business

Engage in any material line of business substantially different from those lines of business conducted by Holdings and its Subsidiaries on the date hereof or any business substantially related or incidental thereto or a reasonable extension thereof.

#### 7.08 Transactions with Affiliates

Enter into any transaction of any kind with any Affiliate of any Borrower, whether or not in the ordinary course of business, other than on terms at least as favorable (taken as a whole) to such Borrower or such Subsidiary as would be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (i) transactions between or among the Loan Parties or between or among Subsidiaries of Holdings or the Loan Parties, (ii) director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements, in each case approved by the Board of Directors of the applicable Loan Party, (iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity based plans and the granting and stockholder rights of registration rights approved by the Board of Directors of the Lead Borrower, (iv) the Loan Parties may enter into any indemnification agreement or any similar arrangement with directors, officers, consultants and employees of the Loan Parties in the ordinary course of business and may pay fees and indemnities to directors, officers, consultants and employees of the Loan Parties and their Subsidiaries in the ordinary course of business, (v) (a) any purchase by Holdings of Equity Interests of any Borrower or any contribution by Holdings to the equity capital of any Borrower and (b) any acquisition of Equity Interests of Holdings and any contribution by any equity holder of Holdings to the equity capital of Holdings, (vii) Restricted Payments permitted by Section 7.06 and Investments permitted by Section 7.03, (viii) transactions pursuant to agreements disclosed to the Administrative Agent on or prior to the Third Restatement Date and (ix) the incurrence of intercompany Indebtedness permitted by Section 7.02.

#### 7.09 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 or any margin security (within the meanings of Regulation U and Regulation T, respectively, of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### 7.10 Financial Covenants

Commencing with the Measurement Period ending December 31, 2019:

(a) [Reserved]:

(b) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as at the end of any Measurement Period to be greater than (i) 3.50 : 1.00, or (ii) 4.00 : 1.00 at the Borrowers' option for the four (4) consecutive quarters following a Designated Acquisition; provided, that this clause (ii) may not be exercised more than two (2) times.

(c) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as at the end of any Measurement Period to be less than 1.50 : 1.00.

7.11 Amendments of Organization Documents

Amend any of its Organization Documents in any material respect, in a manner that is adverse to the rights or remedies of the Administrative Agent or the Lenders in respect of the Loan Documents (whether at law, in equity or otherwise), without the prior written consent of the Administrative Agent (not to be unreasonably withheld).

7.12 Accounting Changes

Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.13 Prepayments, Amendments, Etc. of Permitted Subordinated Indebtedness

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Permitted Subordinated Indebtedness, except (i) intercompany Indebtedness permitted under Section 7.02(a) and (ii) the conversion of any Indebtedness subordinated to the Obligations to Qualified Equity Interests of Holdings.

(b) Amend, modify or change in any manner any term or condition of any Permitted Subordinated Indebtedness in a manner that is adverse in any material respect to the interests of the Lenders, except for (i) intercompany Indebtedness permitted under Section 7.02(a) and (ii) any refinancing, refunding, renewal or extension thereof permitted by Section 7.02(d).

7.14 Sanctions

Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of 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, Arrangers, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise), the Loan Parties or their Subsidiaries of Sanctions.

7.15 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 similar anti-corruption legislation in other jurisdictions in which the Loan Parties or their Subsidiaries are operating, organized or resident.

**ARTICLE VIII.**  
**EVENTS OF DEFAULT AND REMEDIES**

8.01      Events of Default

Any of the following shall constitute an Event of Default:

- (a)      Non-Payment. Any Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee or other amount due hereunder or under any other Loan Document;; or
- (b)      Specific Covenants. (i) Any Borrower or Guarantor, as applicable, fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.10, 6.11, 6.12, 6.15 or Article VII; or (ii) any Guarantor fails to perform or observe any term, covenant or agreement contained in the Guaranty; or
- (c)      Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such default shall not have been remedied or waived for 30 days after the earlier of (i) the date an officer of such Loan Party becomes aware or should have become aware of such default or (ii) receipt by the Lead Borrower of notice from the Administrative Agent or Required Lenders of such default; or
- (d)      Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or
- (e)      Cross-Default. (i) Any Loan Party or any Subsidiary (other than any Immaterial Subsidiary) thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate outstanding principal amount of more than the Threshold Amount, in each case beyond the grace period, if any, provided therefor or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate outstanding principal amount of more than the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto, in each case beyond the grace period, if any, provided therefore, the effect of which default 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 a Loan Party or any Subsidiary (other than any Immaterial Subsidiary) thereof 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 a Loan Party or any Subsidiary (other than any Immaterial Subsidiary) thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary (other than any Immaterial Subsidiary) thereof 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 Subsidiary (other than any Immaterial Subsidiary) thereof 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 60 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary (other than any Immaterial Subsidiary) thereof (i) 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 is rated at least "A" by A.M. Best Company, has been notified of the potential claim and has not disputed coverage), and such judgment shall remain unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of sixty consecutive days or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and enforcement proceedings are commenced by any creditor upon such judgment or order; 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 any Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) any 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. (a) 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 (other than (A) contingent indemnification obligations as to which no claim has been made and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements), 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 any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or (b) (i) any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be “Senior Debt” (or any comparable term) or “Senior Secured Financing” (or any comparable term) under and as defined in the documentation relating to any Permitted Subordinated Debt or (ii) the subordination provisions set forth in the documentation relating to any Permitted Subordinated Debt shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any such Permitted Subordinated Debt, if applicable; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on a material portion of the Collateral purported to be covered thereby; or

#### 8.02 Remedies upon Event of Default

If (x) any Event of Default described in Section 8.01(f) occurs and is continuing, automatically, and (y) any other 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) upon written notice to the Lead Borrower by the Administrative Agent, 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) upon written notice to the Lead Borrower by the Administrative Agent, 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 Borrowers;

(c) upon written notice to the Lead Borrower by the Administrative Agent, require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); 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, however, that upon the occurrence of event described in Section 8.01(f), 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 Borrowers 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, in addition to remedies available under applicable Law, the remedies set forth above and in the Collateral Documents.

### 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 Obligations shall, subject to the provisions of Sections 2.17 and 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the 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 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 (including fees and time charges for attorneys who may be employees of any Lender or 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 Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other 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 Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured 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 Borrowers pursuant to Sections 2.03 and 2.17; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.



Subject to Section 2.03(c) and Section 2.17, 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 Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, 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 the Credit 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 hereof for itself and its Affiliates as if a “Lender” party hereto.

## **ARTICLE IX. ADMINISTRATIVE AGENT**

### **9.01      Appointment and Authority**

(a)      Appointment. Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes 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 are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither any 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. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders and Secured Parties hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document or other Loan Document governed by the laws of such jurisdiction on such Lender’s or Secured Party’s behalf.

(b)      Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C

Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

#### 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 banking, trust, financial, advisory, underwriting or other business with any 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 or to provide notice to or consent of the Lenders with respect thereto.

#### 9.03 Exculpatory Provisions

The Administrative Agent or the Arrangers, 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 Arrangers, as applicable, and their Related Parties:

(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; and

(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, any 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 the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (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, bad faith 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 a Borrower, a Lender or the L/C Issuer.

(e) shall not be responsible for or have any duty or any obligation to any Lender or participant or any other Person 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 the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, 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 be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, 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 be fully protected in relying 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. For purposes of determining compliance with the conditions specified in 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 Third Restatement Date specifying its objections.

#### 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, provided, that any such sub-agent receiving payments from the U.S. Loan Parties shall be a “U.S. Person” and a “financial institution” within the meaning of Treasury Regulations section 1.1441-1. 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 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 credit facilities provided for herein 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)      Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, 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, provided, that any such successor receiving payments from the U.S. Loan Parties shall be a “U.S. Person” and a “financial institution” within the meaning of Treasury Regulations section 1.1441-1; provided that any such appointment shall require the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) unless an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing at the time of such appointment. If no such successor shall have been so appointed by the Required Lenders and (to the extent required) consented to by the Lead Borrower and shall have accepted such appointment within thirty (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 successor Administrative Agent be a Defaulting Lender; provided that any such appointment shall require the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) unless an Event of Default under Section 8.01(a), (f) or (g) has occurred and is

continuing at the time of such appointment. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) Defaulting Lender. 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, appoint a successor; provided that any such appointment shall require the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) unless an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing at the time of such appointment. If no such successor shall have been so appointed by the Required Lenders and (to the extent required) consented to by the Lead Borrower and shall have accepted such appointment within thirty (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) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) 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 as the Required Lenders appoint a successor Administrative Agent with the consent (to the extent required) of the Lead Borrower as provided for above in this Section. 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 retired or removed) Administrative Agent (other than as provided in Section 3.01(g) 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). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers 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 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, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) L/C Issuer and Swing Line Lender. Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an 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 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 Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line 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 Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) 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 the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

#### 9.07 Non-Reliance on Administrative Agent and 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 of 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 Borrowers 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 such 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 Syndication Agent, Documentation Agent, the Book Manager, 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 Borrowers) 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 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(h) and (i), 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, if 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 or in any such proceeding.

#### 9.10 Collateral and Guaranty Matters

Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank of Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) 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 hereunder;

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(d) to release any Guarantor from its obligations under the Guaranty if such Person becomes an Excluded Subsidiary.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or 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 Secured Cash Management Agreements and Secured Hedge Agreements

No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document 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 in respect of the Collateral (including the release or impairment of any Collateral) 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, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such 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.

#### 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 Lead 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 Pension 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, to the

effect that the Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement will not constitute a "prohibited transaction" under Section 406 of ERISA for which there is no exemption.

(b) In addition, unless either (1) 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 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).

## **ARTICLE X. CONTINUING GUARANTY**

### **10.01      Guaranty**

Each Guarantor party hereto that is a Domestic Subsidiary of Holdings and each Subsidiary of Holdings that becomes a Guarantor after the date hereof pursuant to Section 6.12, jointly and severally with each other Loan Party, hereby absolutely and unconditionally guarantees, 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 of the Obligations (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of each Borrower and of each other Guarantor to the Secured Parties, and whether arising hereunder or under any other Loan Document, any Secured Cash Management Agreement or any Secured Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof); 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 or other applicable Law. 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 the Domestic Loan Parties, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any 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 Obligations which might otherwise

constitute a defense to the obligations of any Domestic Loan Party under this Guaranty, and each Domestic Loan Party 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 Domestic Loan Party consents and agrees that the Secured 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 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 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 Obligations. Without limiting the generality of the foregoing, each Domestic Loan Party 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 Domestic Loan Party or any other Domestic Loan Party under this Guaranty or which, but for this provision, might operate as a discharge of any Domestic Loan Party.

#### 10.03 Certain Waivers

Each Domestic Loan Party waives (a) any defense arising by reason of any disability or other defense of any Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of any Borrower or any other guarantor; (b) any defense based on any claim that any Domestic Loan Party's obligations exceed or are more burdensome than those of a Borrower or other Domestic Loan Party; (c) the benefit of any statute of limitations affecting any Domestic Loan Party's liability hereunder; (d) any right to proceed against any Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured 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 Domestic Loan Party 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 Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

#### 10.04 Obligations Independent

The obligations of each Domestic Loan Party hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against each Domestic Loan Party to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

#### 10.05      Subrogation

No Domestic Loan Party shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been paid and performed in full in cash and the Commitments and the Facilities are terminated. If any amounts are paid to any Domestic Loan Party in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

#### 10.06      Termination; Reinstatement

This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are paid in full in cash and the Commitments and the Facilities with respect to the Obligations are terminated. 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 any Borrower or any Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the 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 Secured 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 Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Domestic Loan Parties under this paragraph shall survive termination of this Guaranty.

#### 10.07      Subordination

Each Domestic Loan Party hereby subordinates the payment of all obligations and indebtedness of any Borrower or any other Loan Party owing to such Domestic Loan Party, whether now existing or hereafter arising, including but not limited to any obligation of any Borrower to such Domestic Loan Party as subrogee of the Secured Parties or resulting from such Domestic Loan Party's performance under this Guaranty, to the payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of any Loan Party to any Domestic Loan Party shall be enforced and performance received by such Domestic Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of any Domestic Loan Party under this Guaranty.

#### 10.08      Stay of Acceleration

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against any Domestic Loan Party under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by such Domestic Loan Party and the other Domestic Loan Parties immediately upon demand by the Secured Parties.

## 10.09 Condition of Borrowers

Each Domestic Loan Party acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from any Borrower and any other guarantor such information concerning the financial condition, business and operations of such Borrower and any such other guarantor as such Domestic Loan Party requires, and that none of the Secured Parties has any duty, and such Domestic Loan Party is not relying on the Secured Parties at any time, to disclose to such Domestic Loan Party any information relating to the business, operations or financial condition of such Borrower or any other guarantor (such Domestic Loan Party waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

## 10.10 Rights of Contribution

The Domestic Loan Parties hereby agree, as among themselves, that if any Domestic Loan Party shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Obligations, each other Guarantor shall, on written demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Obligations. The payment obligation of a Domestic Loan Party to any Excess Funding Guarantor under this Section shall be subordinate and subject in right of payment to the prior payment in full in cash of the Obligations of such Domestic Loan Party under the other provisions of this Article and of all other Obligations (other than contingent indemnification obligations not yet asserted, due or payable), and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full in cash of all of the Obligations.

For purposes of this Section, (i) "Excess Funding Guarantor" means, in respect of any Obligations, a Domestic Loan Party that has paid an amount in excess of its Pro Rata Share of such Obligations, (ii) "Excess Payment" means, in respect of any Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Obligations and (iii) "Pro Rata Share" means, for any Domestic Loan Party, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Domestic Loan Party (excluding any Equity Interests of any other Domestic Loan Party) exceeds the amount of all the debts and liabilities of such Loan Party (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Domestic Loan Party hereunder and any obligations of any other Domestic Loan Party that have been Guaranteed by such Domestic Loan Party) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Domestic Loan Parties exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Borrowers and the Guarantors under the Loan Documents) of all of the Domestic Loan Parties, determined (A) with respect to any Domestic Loan Party that is a party hereto on the Third Restatement Date, as of the Third Restatement Date, and (B) with respect to any other Domestic Loan Party, as of the date such Domestic Loan Party becomes a Domestic Loan Party hereunder.



#### 10.11 Joint and Several Obligations

(a) Each Borrower hereby accepts joint and several liability for the Loans and all other Obligations under the Loan Documents in consideration of the financial accommodations to be provided to all Borrowers and other Loan Parties by the Lenders, the L/C Issuer and the Administrative Agent under the Loan Documents, for the mutual benefit, directly and indirectly, of the Loan Parties and in consideration of the undertakings of the other Borrower to accept joint and several liability for the Obligations.

(b) Each Guarantor which is a Domestic Loan Party hereby accepts joint and several liability for the Loans and all other Obligations under the Loan Documents in consideration of the financial accommodations to be provided to the Borrowers and other Loan Parties by the Lenders and the Administrative Agent under the Loan Documents, for the mutual benefit, directly and indirectly, of the Loan Parties and in consideration of the undertakings of the other Guarantors which are Domestic Loan Parties to accept joint and several liability for the Obligations.

(c) Each Domestic Loan Party represents and warrants to the Lenders and the Administrative Agent that it is in the best interests of such Domestic Loan Party to enter into this Agreement inasmuch as the Domestic Loan Parties will, as a result of proceeds of the Loans being made available hereunder for working capital and other financing needs of the Borrowers, derive substantial direct and indirect benefits from the Loans made from time to time to the Borrowers by the Lenders pursuant to this Agreement, and each Domestic Loan Party agrees that the Administrative Agent and the Lenders are relying on this representation in agreeing to make Loans to the Borrowers.

#### 10.12 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 shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section 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.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers 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 however that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;

(b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension under a particular Facility without the written consent of the Required Revolving Lenders or the Required Term Lenders, as the case may be;

(c) 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;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to any Lender hereunder or under such other Loan Document without the written consent of such Lender;

(e) 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 to any Lender without the written consent of such Lender; provided, however, 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 Borrowers 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;

(f) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or 2.06(b), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(g) change (i) any provision of this Section 11.01 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 (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender or (ii) the definition of “Required Revolving Lenders,” or “Required Term Lenders” without the written consent of each Lender under the applicable Facility;

(h) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(i) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the value of the Guaranty, without the written consent of each Lender; or

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders; and provided, further, 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 Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line 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 without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender. In the event of an increase in the Revolving Credit Facility in accordance with the provisions of Section 2.15 or an increase in the Term Facility in accordance with the provisions of Section 2.16, the Administrative Agent shall be permitted, on behalf of all Lenders (and is hereby authorized by all such Lenders), to enter into amendments to this Agreement and all other Loan Documents to provide for such increase in the Revolving Credit Facility or Term Facility, as applicable, on the terms set forth in Section 2.15 or Section 2.16. In no event shall the provisions of this paragraph obligate any Lender to increase their Commitment hereunder.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrowers may replace such non-consenting Lender in accordance with Section 11.14; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this paragraph).

Notwithstanding the foregoing,

(I) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders and the Borrowers to add one or more additional credit facilities to this Agreement (it being understood that no Lender shall have any obligation to provide or to commit to provide all or any portion of any such additional credit facility) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and Revolving Loans and the accrued interest and fees in respect thereof;

(II) this Agreement may be amended with the written consent of the Administrative Agent, the Borrowers and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing or exchange of all outstanding Term Loans of any tranche ("Refinanced Term Loans") with a replacement term loan tranche hereunder ("Replacement Term Loans"); provided that the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans plus any interest, premium or other amount due with respect to such Refinanced Term Loans, and any underwriting discounts, fees, commissions and expenses incurred in connection with the Replacement Term Loans;

(III) guarantees, collateral security documents and related documents executed by Holdings or Foreign Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrowers without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents;

(IV) this Agreement may be amended (or amended and restated) with the written consent of the Administrative Agent, the Borrowers and the participating Lenders pursuant to Section 2.14, 2.15 and 2.16 in accordance with the terms thereof;

(V) conditions to the effectiveness of any Incremental Revolving Commitment or any increase in the Term Loans or Incremental Tranche may, to the extent not inconsistent with the provisions of Section 2.15 or Section 2.16, as applicable, be waived with the consent of a majority in interest of the Revolving Credit Lenders and Eligible Assignees, or the majority in interest of the Term Lenders and Eligible Assignees, in each

case, having commitments in respect of such Incremental Revolving Commitment, increase in the Term Loans or Incremental Tranche, as the case may be; and

(VI) this Agreement may be amended, supplemented or waived with the consent of the Administrative Agent at the request of the Borrowers without the need to obtain the consent of any Lender if such amendment, supplement or waiver is in order to cure ambiguities, inconsistencies, omissions, mistakes or defects so long as the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, supplement or waiver.

#### 11.02 Notices; Effectiveness; Electronic Communications

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 telecopier 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 Holdings, any Borrower, any other Guarantor, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier 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, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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 telecopier or electronic mail 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 subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail 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 by electronic

communication. The Administrative Agent or the Lead Borrower may, 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), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, 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.

(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 any Borrower, any other Loan Party, 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 any Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any other Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each Borrower, each other Loan Party, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower, the Administrative Agent, the L/C Issuer and the Swing Line 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, telecopier 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 any 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 Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of any Borrower 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 Borrowers 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 any Borrower. 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 (including the authority to call or otherwise assert a Default or Event of Default) 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, however, 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 Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line 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 Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (limited, in the case of fees, charges and disbursements for legal counsel, to the reasonable and documented fees, charges and disbursements of one external counsel for the Administrative Agent and its Affiliates, taken as a whole, and of one local counsel in each applicable jurisdiction for the Administrative Agent and its Affiliates, taken as a whole), 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 and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, the L/C Issuer and the Lenders (limited, in the case of fees, charges and disbursements for legal counsel, to the reasonable and documented fees, charges and disbursements of one external counsel for all such Persons, taken as a whole, and of one local counsel in each applicable jurisdiction for all such Persons, taken as a whole, and in the event of any conflict of interest, one additional external counsel to all similarly situated 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, or (B) in connection with 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 Borrowers. The Borrowers 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 “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of fees, charges and disbursements for legal counsel, to the reasonable and documented fees, charges and disbursements of one external counsel for all such Indemnitees, taken as a whole, and of one local counsel in each applicable jurisdiction for all such Indemnitees, taken as a whole, and in the event of any conflict of interest, one additional external counsel to all similarly situated affected parties taken as a whole, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any 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, 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 any Borrower or any of their Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of their 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 any Borrower or any other Loan Party or any of such Borrower's or such Loan Party's directors, shareholders or creditors, 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 (w) result from a claim by any Indemnitee against any other Indemnitee (except, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, claims relating to the administration of this Agreement and the other Loan Documents), (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee; or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach of such Indemnitee's (or any of its Related Party's or Persons to whom it is a Related Party) obligations hereunder or under any other Loan Document, if such 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) arise solely out of the presence or release of Hazardous Materials which first occurs on any property after foreclosure or similar exercise of remedies by the Administrative Agent or any Lender resulting in a transfer of title to a Lender or any other third party and the Loan Parties no longer operate or occupy the property. This Section 11.04 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 Borrowers for any reason fail to pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the L/C Issuer 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 or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer 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) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (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 hereto shall assert (and by accepting the benefits hereof, each Indemnitee agrees that it shall not assert), and each party hereto hereby waives (and by accepting the benefits hereof, each Indemnitee waives) any claim against any other party hereto or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this

Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof, even if advised of the possibility thereof. No Indemnitee referred to in subsection (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 other than for direct or actual damages resulting from (i) the gross negligence, bad faith or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction or (ii) a breach of such Indemnitee's (or any of its Related Party's or such Persons to whom it is a Related Party) obligations hereunder or under any other Loan Document, if such 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.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after written demand therefor, accompanied by reasonably detailed supporting documentation.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### 11.05 Payments Set Aside

To the extent that any payment by or on behalf of the Borrowers 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 no 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 (other than a Defaulting Lender, subject to Section 2.18(b)) 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 Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (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 subsection (d) of this Section 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(s) and the Loans (including for purposes of this Section 11.06(b), participations in L/C Obligations and in Swing Line 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 under any Facility and the Loans at the time owing to it under such Facility 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 subsection (b)(i)(A) of this Section, 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 \$10,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$5,000,000, in the case of any assignment in respect of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(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 (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing at the time of such assignment or (2) such assignment is (x) from a Term Loan Lender to a Lender, an Affiliate of a Lender or an Approved Fund or (y) from a Revolving Credit Lender to a Revolving Credit Lender, an Affiliate of a Revolving Credit Lender or an Approved Fund with respect to a Revolving Credit Lender; provided that the Lead Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Term Commitment or Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(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, however, 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 Borrowers. No such assignment shall be made to Holdings or any of Holdings' Subsidiaries; provided that assignments of Term Loans shall be permitted to Holdings or any of its Subsidiaries, so long as (i) any such assignment is made pursuant to an offer to all Term Lenders pro rata, (ii) no Event of Default has occurred and is continuing at the time of such assignment and (iii) any Term Loans assigned to Holdings or any of its Subsidiaries are cancelled immediately thereafter.

(vi) No Assignment to Natural Persons or Competitors of Holdings and its Subsidiaries. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural persons) or to any competitor, customer or supplier of Holdings or any of its Subsidiaries previously identified in writing to the Administrative Agent and Lenders as such; provided, however, that any addition to such list shall not be effective until after at least three (3) Business Days following receipt thereof by the Administrative Agent from the Lead Borrower.

(vii) Assignments to Borrower Affiliates. No such assignment shall be to an Affiliate of Holdings (other than Holdings and its Subsidiaries pursuant to clause (v) above); provided that each Lender shall have the right at any time to sell, assign or transfer all or a portion of the Loans owing to it to any Affiliate of Holdings that is not a Subsidiary of Holdings (such affiliate, an “Affiliated Lender”) subject to the following limitations: (i) the aggregate principal amount of Loans purchased by assignment pursuant to this Section (vii) and held at any one time by Affiliated Lenders may not exceed 20% of the outstanding principal amount of all Loans; (ii) each Affiliated Lender, solely in its capacity as a Lender, hereby agrees that it shall have no right whatsoever so long as such Person is an Affiliated Lender: (A) to vote with respect to any amendment, modification, waiver, consent or other such action with respect to any of the terms of this Agreement or any other Loan Document and that it shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Affiliated Lenders; provided that, notwithstanding the foregoing, (x) such assignee shall be permitted to vote if such amendment, modification, waiver, consent or other such action disproportionately affects such Affiliated Lender in its capacity as a Lender as compared to other Lenders and (y) no amendment, modification, waiver, consent or other action shall deprive any Affiliated Lender of its share of any payments which the Lenders are entitled to share on a Pro Rata Basis hereunder and (z) each Affiliated Lender shall have all voting rights described in Section 11.01(a)-(j) of this Agreement; (B) to attend (or receive any notice of) any meeting, conference call or correspondence (other than any meeting or conference call at which any Loan Party or any Subsidiary is present or correspondence with or to any Loan Party or any Subsidiary) with Administrative Agent or any Lender or receive any information from Administrative Agent or any other Lender (other than notices of borrowings, prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant hereto); or (C) to make or bring any claim, in its capacity as Lender, against Administrative Agent or any Lender with respect to the duties and obligations of such Persons under the Loan Documents.

(viii) 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 Borrowers 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 Swing Line 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 paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, 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, 3.07 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their 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 subsection 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). For the avoidance of doubt, an entity that has (A) acquired an assignment or participation interest, (B) entered into a trade for either an assignment or participation interest or (C) become a competitor of Holdings or any of its Subsidiaries before such entity was identified in writing to the Administrative Agent and the Lenders as a competitor, customer or supplier pursuant to Section 11.06(b)(vi), shall not be retroactively disqualified as a Lender or Participant, as the case may be.

(ix) If:

- (i) a Lender assigns or transfers any participation to an assignee or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date of the assignment or transfer or such change in its Lending Office, a Borrower would be obliged to make a payment to the assignee under Section 3.02,

then the assignee shall only be entitled to receive payment under that Section to the same extent as the Lender would have been if the assignment or transfer or change in Facility Office had not occurred.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (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 stated 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 Borrowers, 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. The Register shall be available for inspection by the Borrowers and any Lender (solely with respect to its own address, Commitments, Loans and L/C Obligations, if any), 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 Borrowers 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 by or for the primary benefit of one or more natural persons, any Person previously identified in writing to the Administrative Agent or such Lender by the Lead Borrower as a competitor of a Loan Party or any Subsidiary or the or the Borrowers or any of the Borrowers’ 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 Swing Line Loans) owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (iii) where such rights and obligations relate to a U.K. Facility, the Participant is U.K. Qualifying Lender; (iv) the Borrowers, 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 and (v) the consent of the Lead Borrower shall be required solely in connection with any Participation by a Defaulting Lender or any Lender that has breached its obligations hereunder or under any Loan Document. 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 and shall not give the Participant any consent, notice or other rights with respect to such enforcement, amendments, modifications or waivers; 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 (other than clauses (a) and (b) that affects such Participant and would require such Participant’s consent if such Participant were a Lender under the applicable Facility. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.07 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b). 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 such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Notwithstanding the foregoing, each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a “book entry” register (as described in the applicable United States federal income tax law and United States Treasury regulations) on which it records the name and address of the proposed Participant and the principal amounts (and stated interest) of each such proposed Participant’s interest in the Loans or other Obligations under this Agreement (the “Participant Register”). The entries in the Participant Register shall be conclusive



absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation and as having “ownership of an interest” (as such term is defined in the applicable Treasury regulations) for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury regulations or any successor United States Treasury Regulations, or is otherwise required thereunder.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.02 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower’s prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) 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.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 11.06(b), Bank of America may, (i) upon 30 days’ notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days’ notice to the Lead Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line 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 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 Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line 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 Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line 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 Swing Line Lender, as the case may be, and (b) 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

(a) 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 and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (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 requested by any regulatory authority purporting to have jurisdiction over it (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, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.15(c) or 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Loan Parties or their 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 Lead Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 11.07, (ii) 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 Loan Parties or their Subsidiaries or (iii) is independently discovered or developed by a party hereto without utilizing any Information received from the Loan Parties or their Subsidiaries 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.

(b) For purposes of this Section 11.07, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses (including, for the avoidance of doubt, under Sections 6.01, 6.02 and 6.03), 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 any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such 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 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.

(c) Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning a 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.

(d) The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

(e) Notwithstanding the foregoing, in no event shall the Administrative Agent, any Lender or the L/C Issuer disclose any Information to any Person previously identified in writing addressed to such Person by the Lead Borrower as a competitor, customer or supplier (or Affiliate of any of the foregoing) of a Loan Party or any Subsidiary.

#### 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 any Borrower or any other Loan Party against any and all of the obligations of such 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, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office 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 2.18 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 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 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 Lead 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. Notwithstanding the foregoing, no amount setoff from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

#### 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 Borrowers. 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 Canadian Interest Act

For the purposes of the *Interest Act (Canada)* and all any other applicable laws which may hereafter regulate the calculation or computation of interest on borrowed funds, the yearly rate of interest to which any rate for a period less than a year is equivalent is such rate, divided by the number of days in such period, and multiplied by the actual number of days in the year.

#### 11.11 Counterparts; Integration; Effectiveness

This Agreement 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. This Agreement and the other Loan Documents 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. 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. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document.

#### 11.12 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.

### 11.13 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.

### 11.14 Replacement of Lenders

If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender does not consent to any amendment or waiver of a provision hereof or of any other Loan Document to which the Required Lenders have consented (and the consent of such Lender is required for such amendment or waiver pursuant to the provisions of Section 11.01), or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, then the Borrowers 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 and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid or caused to be paid to the Administrative Agent the assignment fee specified in Section 11.06(b) (unless waived by the Administrative Agent);

(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 3.07) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (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; and

(d) such assignment does not conflict with applicable Laws.

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 Borrowers to require such assignment and delegation cease to apply.

11.15      Governing Law; Jurisdiction; Etc.

(a)      GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b)      SUBMISSION TO JURISDICTION. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION 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 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 ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c)      WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY 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 PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY 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



11.16      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.

11.17      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), each 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 and the Arrangers, are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and the Arrangers on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party 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 and the Arrangers each 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 any Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arrangers has any obligation to any 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 and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Arrangers has any obligation to disclose any of such interests to any Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.18      Electronic Execution of Assignments and Certain Other Documents

The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and



contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent, the L/C Issuer nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent, the L/C Issuer or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterpart.

#### 11.19 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 Borrowers 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 each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrowers 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, without limitation, the Act and the Beneficial Ownership Regulation.

#### 11.20 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 the Borrowers in respect of any such sum due from it to the Administrative Agent 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 or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent 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 or any Lender from the Borrowers in the Agreement Currency, the Borrowers agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent 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 or any Lender in such currency, the

Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrowers (or to any other Person who may be entitled thereto under applicable law).

11.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

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 EEA 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 an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 any EEA Resolution Authority.

11.22 Third Amended and Restated Agreement

(a) This Agreement, effective as of the Third Restatement Date, is an amendment and restatement of the Existing Credit Agreement, it being acknowledged and agreed that as of the Third Restatement Date all obligations outstanding under or in connection with the Existing Credit Agreement and any of the other Loan Documents (such obligations, collectively, the “Existing Obligations”) constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Existing Credit Agreement or the Existing Obligations. From and after the Third Restatement Date, any reference to the Existing Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Existing Credit Agreement.

- (b) Without limiting the generality of Section 11.22(a), the parties agree that:
  - (i) all Existing Obligations outstanding as at the Third Restatement Date shall, as of the Third Restatement Date, be deemed to be obligations outstanding hereunder and subject to the terms of this Agreement, and

- (ii) each of the other Loan Documents (other than the Existing Credit Agreement) is hereby ratified and confirmed in all respects and shall continue in full force and effect, except that (A) any references therein to the Existing Credit Agreement shall be deemed to refer to this Agreement, and (B) any security granted or guarantee given pursuant to or in connection with the Existing Credit Agreement and the other Loan Documents (collectively, the “Existing Security”) shall continue to secure or guarantee, as applicable, the obligations of the Borrowers arising pursuant to or in connection with this Agreement (including all such obligations arising initially pursuant to or in connection with the Existing Credit Agreement and the other Loan Documents), except as otherwise agreed in writing in accordance with Section 11.01, including pursuant to any amendments, confirmations, or releases entered into on the Third Restatement Date.

11.23 [Reserved]

11.24 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.

## 11.25 German Parallel Debt.

For purposes of (i) taking security in, or subject to the laws of, Germany and (ii) ensuring the continued validity of such security, each of the Administrative Agent, the Lenders and the Loan Parties agree:

(a) Each Loan Party hereby irrevocably and unconditionally undertakes to pay to the Administrative Agent, as a creditor in its own right and not as a representative of the Lenders, sums (the “German Parallel Debt”) equal to and in the currency of each amount payable by such Loan Party to each of the Lenders under the Credit Agreement or any other Loan Document as and when that amount falls due for payment under the relevant Loan Document or would have fallen due but for any discharge resulting from failure of a Lender to take appropriate steps, in insolvency proceedings affecting that Loan Party, to preserve its entitlement to be paid that amount.

(b) Subject to the limitation set forth under clause (c) below, the Administrative Agent shall have its own independent right to demand payment of the amounts payable by each Loan Party under this Section 11.25, irrespective of any discharge of such Loan Party’s obligation to pay those amounts to the Lenders resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Loan Party, to preserve their entitlement to be paid those amounts, provided that the amount of the German Parallel Debt of each Loan Party shall at all times be equal to the amount payable by such Loan Party to each of the Lenders under each of the Loan Documents.

(c) Any amount due and payable by a Loan Party to the Administrative Agent under this Section 11.25 shall be decreased to the extent that the Lenders have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Loan Documents and any amount due and payable by a Loan Party to such Lenders under the other provisions of the Loan Documents shall be decreased to the extent that the Administrative Agent has received (and is able to retain) payment in full of the corresponding amount under this Section 11.25.

(d) Subject to the limitation set forth under clause (c) above, the rights of the Lenders to receive payment of amounts payable by each Loan Party under the Loan Documents are several and are separate and independent from, and without prejudice to, the rights of the Administrative Agent to receive payment under this Section 11.25.

(e) Notwithstanding the foregoing, any payment under the Loan Documents shall be made to the relevant Loan Party as set out in the respective Loan Document, unless expressly stated otherwise in the relevant Loan Document (save for this Section 11.25) or unless the relevant Loan Party directs such payment to be made to the Administrative Agent.

## 11.26 Administration of German Law Security.

(a) The Administrative Agent will:

(i) hold and administer any security governed by German law which is security assigned or otherwise transferred to it under a non accessory security right (*nicht akzessorische Sicherheit*) as trustee (*Treuhänder*) for the benefit of the Lenders; and

(ii) administer (*verwalten*) any security governed by German law which is pledged (*Verpfändung*) or otherwise transferred to any or each Lender under an accessory security right (*akzessorische Sicherheit*).

(b) Each Lender authorizes the Administrative Agent (whether or not by or through employees or agents):

(i) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Administrative Agent by the documents governing the German Security Agreements and this Agreement together with such powers and discretions as are reasonably incidental thereto;

(ii) to take such action on its behalf as may, from time to time, be authorized under or in accordance with the German Security Agreements and this Agreement; and

(iii) to execute for and on its behalf any and all German Security Agreements.

[~~REMAINDER OF PAGE~~SIGNATURE PAGES INTENTIONALLY ~~LEFT BLANK~~OMITTED]

~~IN WITNESS WHEREOF~~, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**~~BORROWERS:~~**

~~NOVANTA CORPORATION~~

~~By:—~~

~~Name: Robert Buckley~~

~~Title: Chief Financial Officer~~

~~NOVANTA UK INVESTMENTS HOLDING LIMITED~~

~~By:—~~

~~Name: Robert Buckley~~

~~Title: Director~~

~~NOVANTA EUROPE GmbH~~

~~By:—~~

~~Name: Robert Buckley~~

~~Title: Managing Director~~

**~~HOLDINGS:~~**

~~NOVANTA INC.~~

~~By:—~~

~~Name: Robert Buckley~~

~~Title: Chief Financial Officer~~

**~~OTHER GUARANTORS:~~**

~~NOVANTA TECHNOLOGIES UK LIMITED~~

Signatures to Third Amended and Restated Credit Agreement

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By:—  
Name:—Robert Buckley  
Title:—Director

~~NDS SURGICAL IMAGING LLC~~

By:—  
Name:—Robert Buckley  
Title:—President

~~MED X CHANGE, INC.~~

By:—  
Name:—Robert Buckley  
Title:—President

~~NOVANTA MEDICAL TECHNOLOGIES CORP.~~

By:—  
Name:—Robert Buckley  
Title:—President



~~BANK OF AMERICA, N.A., as~~  
~~Administrative Agent~~

~~By:—~~  
~~Name:—~~  
~~Title:—~~

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Signatures to Third Amended and Restated Credit Agreement

~~BANK OF AMERICA, N.A., as a Lender, L/C Issuer and  
Swing Line Lender~~

~~By:—~~

~~Name: John F. Lynch~~

~~Title: Senior Vice President~~

<del>Lender</del>	<del>Name of Treaty</del>	<del>Bank ——— of</del>
		<del>America, N.A.</del>
<del>Double tax treaty</del>	<del>passport — scheme — reference</del>	<del>13/B/7418/</del>
<del>number</del>	<del>DTTP</del>	
<del>Jurisdiction — of</del>	<del>United States of</del>	
<del>tax residence</del>	<del>America</del>	

Signatures to Third Amended and Restated Credit Agreement

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JPMORGAN CHASE BANK, N.A., as a Lender and co-syndication agent

By:—

Name:—

Title:—

<i>Lender</i>	<i>Name of Treaty</i>	JPMorgan Chase Bank, N.A, London Branch
<i>Double tax treaty passport scheme reference number</i>	DTTP	13/M/0268710/
<i>Jurisdiction of tax residence</i>		US

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Signatures to Third Amended and Restated Credit Agreement

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a  
Lender and as co-syndication agent

By:—  
Name:—  
Title:—

<i>Lender</i>	<i>Name of Treaty</i>	Wells Fargo Bank, N.A.
	<i>Double tax treaty passport scheme reference number</i>	DTTP 13/W/61173/
	<i>Jurisdiction of tax residence</i>	United States of America

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Signatures to Third Amended and Restated Credit Agreement

~~SILICON VALLEY BANK, as a Lender and co-documentation agent~~

~~By:—  
Name:—  
Title:—~~

<del>Lender</del>	<del>Name of Treaty</del>	<del>Bank</del>	<del>Silicon Valley</del>
<del>Double tax treaty passport scheme reference number</del>	<del>DTTP</del>	<del>13/S/0299723/</del>	
<del>Jurisdiction of tax residence</del>	<del>United States of America</del>		

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~~Signatures to Third Amended and Restated Credit Agreement~~



~~TD BANK, N.A., as a Lender and co-documentation agent~~

~~By:—~~

~~Name:—~~

~~Title:—~~

<i>Name of Treaty Lender</i>	<del>TD Bank, N.A.</del>
<i>Double tax treaty passport scheme reference number</i>	<del>13/T/358618/DTTP</del>
<i>Jurisdiction of tax residence</i>	<del>United States of America</del>

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~~Signatures to Third Amended and Restated Credit Agreement~~

~~BANK OF MONTREAL, as a Lender and co-documentation agent~~

~~By:—~~

~~Name:—~~

~~Title:—~~

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~~Signatures to Third Amended and Restated Credit Agreement~~

~~BANK OF MONTREAL, London Branch, as a Lender~~

~~By:—~~

~~Name:—~~

~~Title:—~~

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Signatures to Third Amended and Restated Credit Agreement

~~HSBC BANK USA, National Association, as a Lender~~

~~By:—~~

~~Name:—~~

~~Title:—~~

<del><i>Lender</i></del>	<del><i>Name of Treaty</i></del>	<del>HSBC Bank USA, National Association</del>
<del><i>passport scheme reference number</i></del>	<del><i>Double tax treaty DTTP</i></del>	<del>13/H/314375/</del>
<del><i>tax residence</i></del>	<del><i>Jurisdiction of</i></del>	<del>United States of America</del>

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Signatures to Third Amended and Restated Credit Agreement

~~HSBC UK BANK PLC, as a Lender~~

~~By:—~~

~~Name:—~~

~~Title:—~~

<del>Name of Treaty Lender</del>	<del>HSBC UK Bank Plc</del>
<del>Double tax treaty passport scheme reference number</del>	<del>N/A</del>
<del>Jurisdiction of tax residence</del>	<del>United Kingdom</del>

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~~Signatures to Third Amended and Restated Credit Agreement~~

## COMMITMENTS AND APPLICABLE PERCENTAGES

TERM COMMITMENTS		
Lender	Commitment	Applicable Percentage
Bank of America, N.A.	€15,829,333.34	17.777777785%
JPMorgan Chase Bank, N.A.	€15,829,333.33	17.777777774%
Wells Fargo Bank, National Association	€15,829,333.33	17.777777774%
Bank of Montreal	€12,861,333.34	14.444444452%
Silicon Valley Bank	€10,882,666.66	12.222222215%
TD Bank, N.A.	€9,893,333.34	11.111111119%
HSBC Bank USA, N.A.	€6,155,851.85	6.913580245%
HSBC UK Bank Plc	€1,758,814.81	1.975308637%
Total	€89,040,000.00	100.000000000%

REVOLVING CREDIT COMMITMENTS		
(a) Revolving Credit Lender's Revolving Credit Commitment		
Lender	Commitment	Applicable Percentage
Bank of America, N.A.	\$82,222,222.22	16.610549943%
JPMorgan Chase Bank, N.A.	\$62,222,222.22	12.570145903%
Wells Fargo Bank, National Association	\$82,222,222.22	16.610549943%
PNC Bank, National Association	\$100,000,000.00	20.202020203%
Bank of Montreal	\$50,555,555.56	10.213243547%
Silicon Valley Bank	\$47,777,777.78	9.652076319%
TD Bank, N.A.	\$38,888,888.89	7.856341190%
HSBC Bank USA, N.A.	\$24,197,530.87	4.888390075%
HSBC UK Bank Plc	\$6,913,580.24	1.396682877%
Total	\$495,000,000.00	100.000000000%

~~Signatures to Third Amended and Restated Credit Agreement~~

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**(b) Letter of Credit Sublimit**

<b>Lender</b>	<b>Letter of Credit Sublimit</b>
Bank of America, N.A.	\$20,000,000.00
Total:	\$20,000,000.00

**(c) Swing Line Sublimit**

	<b>Swing Line Sublimit</b>
Bank of America, N.A.	\$10,000,000.00
Total:	\$10,000,000.00

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002  
CERTIFICATIONS**

I, Matthijs Glastra, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Novanta Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2021

/s/ Matthijs Glastra

Matthijs Glastra

Chief Executive Officer

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

**CERTIFICATION**

I, Robert J. Buckley, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Novanta Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2021

/s/ Robert J. Buckley  
Robert J. Buckley  
Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Novanta Inc. (the "Company") on Form 10-Q for the period ended October 1, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthijs Glastra, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) the Report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Matthijs Glastra  
\_\_\_\_\_  
Matthijs Glastra  
*Chief Executive Officer*

November 9, 2021

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Novanta Inc. (the "Company") on Form 10-Q for the period ended October 1, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert J. Buckley, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert J. Buckley

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Robert J. Buckley  
*Chief Financial Officer*

November 9, 2021

<b>Document and Entity Information - shares</b>	<b>9 Months Ended Oct. 01, 2021</b>	<b>Oct. 27, 2021</b>
<a href="#"><u>Cover [Abstract]</u></a>		
<a href="#"><u>Document Type</u></a>	10-Q	
<a href="#"><u>Amendment Flag</u></a>	false	
<a href="#"><u>Document Period End Date</u></a>	Oct. 01, 2021	
<a href="#"><u>Document Fiscal Year Focus</u></a>	2021	
<a href="#"><u>Document Fiscal Period Focus</u></a>	Q3	
<a href="#"><u>Trading Symbol</u></a>	NOVT	
<a href="#"><u>Entity Registrant Name</u></a>	NOVANTA INC.	
<a href="#"><u>Entity Central Index Key</u></a>	0001076930	
<a href="#"><u>Current Fiscal Year End Date</u></a>	--12-31	
<a href="#"><u>Entity Filer Category</u></a>	Large Accelerated Filer	
<a href="#"><u>Entity Small Business</u></a>	false	
<a href="#"><u>Entity Emerging Growth Company</u></a>	false	
<a href="#"><u>Entity Common Stock, Shares Outstanding</u></a>		35,599,658
<a href="#"><u>Entity Current Reporting Status</u></a>	Yes	
<a href="#"><u>Entity Shell Company</u></a>	false	
<a href="#"><u>Entity File Number</u></a>	001-35083	
<a href="#"><u>Entity Tax Identification Number</u></a>	98-0110412	
<a href="#"><u>Entity Address, Address Line One</u></a>	125 Middlesex Turnpike	
<a href="#"><u>Entity Address, City or Town</u></a>	Bedford	
<a href="#"><u>Entity Address, State or Province</u></a>	MA	
<a href="#"><u>Entity Address, Country</u></a>	US	
<a href="#"><u>Entity Address, Postal Zip Code</u></a>	01730	
<a href="#"><u>City Area Code</u></a>	781	
<a href="#"><u>Local Phone Number</u></a>	266-5700	
<a href="#"><u>Document Quarterly Report</u></a>	true	
<a href="#"><u>Document Transition Report</u></a>	false	
<a href="#"><u>Entity Incorporation, State or Country Code</u></a>	A3	
<a href="#"><u>Entity Interactive Data Current</u></a>	Yes	
<a href="#"><u>Security Exchange Name</u></a>	NASDAQ	
<a href="#"><u>Title of 12(b) Security</u></a>	Common shares, no par value	

**CONSOLIDATED  
BALANCE SHEETS - USD**  
(**\$**)  
**\$ in Thousands**

	<b>Oct. 01, 2021</b>	<b>Dec. 31, 2020</b>
<b><u>Current assets</u></b>		
Cash and cash equivalents	\$ 102,395	\$ 125,054
Accounts receivable, net of allowance of \$498 and \$274, respectively	112,080	75,054
Inventories	119,422	92,737
Prepaid income taxes and income taxes receivable	7,252	3,203
Prepaid expenses and other current assets	12,163	8,125
Total current assets	353,312	304,173
Property, plant and equipment, net	86,279	78,676
Operating lease assets	43,459	34,444
Deferred tax assets	411	10,491
Other assets	2,809	2,894
Intangible assets, net	231,027	148,521
Goodwill	492,940	285,980
Total assets	1,210,237	865,179
<b><u>Current liabilities</u></b>		
Current portion of long-term debt	5,207	5,508
Accounts payable	65,012	42,966
Income taxes payable	5,674	5,787
Current portion of operating lease liabilities	7,575	6,188
Accrued expenses and other current liabilities	104,506	53,780
Total current liabilities	187,974	114,229
Long-term debt	441,831	194,927
Operating lease liabilities	40,850	32,802
Deferred tax liabilities	21,936	24,134
Income taxes payable	5,789	5,112
Other liabilities	11,744	17,166
Total liabilities	710,124	388,370
Commitments and contingencies (Note 15)		
<b><u>Stockholders' equity:</u></b>		
Preferred shares, no par value; Authorized shares: 7,000; No shares issued and outstanding		
Common shares, no par value; Authorized shares: unlimited; Issued and outstanding: 35,600 and 35,163, respectively	423,856	423,856
Additional paid-in capital	48,489	58,992
Retained earnings	42,779	6,202
Accumulated other comprehensive loss	(15,011)	(12,241)
Total stockholders' equity	500,113	476,809
Total liabilities and stockholders' equity	\$ 1,210,237	\$ 865,179



**CONSOLIDATED  
BALANCE SHEETS**  
(Parenthetical) - USD (\$)  
\$ in Thousands

**9 Months Ended 12 Months Ended**

**Oct. 01, 2021      Dec. 31, 2020**

**Statement Of Financial Position [Abstract]**

<u>Accounts receivable, allowance</u>	\$ 498	\$ 274
<u>Preferred shares, no par value</u>	\$ 0	\$ 0
<u>Preferred shares, Authorized</u>	7,000,000	7,000,000
<u>Preferred shares, Issued</u>	0	0
<u>Preferred shares, outstanding</u>	0	0
<u>Common shares, Authorized</u>	Unlimited	Unlimited
<u>Common shares, no par value</u>	\$ 0	\$ 0
<u>Common shares, Issued</u>	35,600,000	35,163,000
<u>Common shares, outstanding</u>	35,600,000	35,163,000

**CONSOLIDATED  
STATEMENTS OF  
OPERATIONS - USD (\$)  
shares in Thousands, \$ in  
Thousands**

**3 Months Ended**

**9 Months Ended**

**Oct. 01, 2021 Oct. 02, 2020 Oct. 01, 2021 Oct. 02, 2020**

**Income Statement [Abstract]**

<u>Revenue</u>	\$ 177,726	\$ 142,929	\$ 507,833	\$ 443,125
<u>Cost of revenue</u>	101,428	83,824	290,389	260,873
<u>Gross profit</u>	76,298	59,105	217,444	182,252
<b><u>Operating expenses:</u></b>				
<u>Research and development and engineering</u>	17,468	15,231	53,104	45,005
<u>Selling, general and administrative</u>	31,296	26,788	94,189	82,451
<u>Amortization of purchased intangible assets</u>	4,139	3,533	11,300	10,388
<u>Restructuring, acquisition and related costs</u>	8,120	1,687	16,485	5,591
<u>Total operating expenses</u>	61,023	47,239	175,078	143,435
<u>Operating income</u>	15,275	11,866	42,366	38,817
<u>Interest income (expense), net</u>	(1,710)	(1,698)	(4,496)	(5,077)
<u>Foreign exchange transaction gains (losses), net</u>	34	(136)	(299)	(164)
<u>Other income (expense), net</u>	(71)	(14)	(238)	47
<u>Income before income taxes</u>	13,528	10,018	37,333	33,623
<u>Income tax provision (benefit)</u>	(75)	1,760	756	1,758
<u>Consolidated net income</u>	\$ 13,603	\$ 8,258	\$ 36,577	\$ 31,865
<b><u>Earnings per common share (Note 5):</u></b>				
<u>Basic</u>	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
<u>Diluted</u>	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89
<u>Weighted average common shares outstanding—basic</u>	35,447	35,142	35,366	35,144
<u>Weighted average common shares outstanding—diluted</u>	35,764	35,688	35,771	35,609

**CONSOLIDATED  
STATEMENTS OF  
COMPREHENSIVE  
INCOME (LOSS) - USD (\$)  
\$ in Thousands**

3 Months Ended		9 Months Ended	
Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020

**Statement Of Income And Comprehensive Income**  
**[Abstract]**

<u>Consolidated net income</u>	\$ 13,603	\$ 8,258	\$ 36,577	\$ 31,865
<b><u>Other comprehensive income (loss):</u></b>				
<u>Foreign currency translation adjustments, net of tax</u>	<sup>[1]</sup> (3,248)	4,302	(3,602)	(1,006)
<u>Pension liability adjustments, net of tax</u>	<sup>[2]</sup> 448	(68)	832	769
<u>Total other comprehensive income (loss)</u>	(2,800)	4,234	(2,770)	(237)
<u>Total consolidated comprehensive income</u>	\$ 10,803	\$ 12,492	\$ 33,807	\$ 31,628

[1] The tax effect on this component of comprehensive income (loss) was nominal for all periods presented.

[2] The tax effect on this component of comprehensive income (loss) was nominal for all periods presented. See Note 4 for the total amount of pension liability adjustments reclassified out of accumulated other comprehensive income (loss).

<b>CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY - USD (\$) shares in Thousands, \$ in Thousands</b>	<b>Total</b>	<b>Common Shares</b>	<b>Additional Paid-In Capital</b>	<b>Retained Earning (Deficit)</b>	<b>Accumulated Other Comprehensive Loss</b>
<u>Balance at Dec. 31, 2019</u>	\$ 417,172	\$ 423,856	\$ 49,748	\$ (38,319)	\$ (18,113)
<u>Balance (in shares) at Dec. 31, 2019</u>		35,052			
<u>Consolidated net income</u>	31,865			31,865	
<u>Common shares issued under stock plans</u>	179		179		
<u>Common shares issued under stock plans (in shares)</u>		264			
<u>Common shares withheld for taxes on vested stock awards</u>	(8,302)		(8,302)		
<u>Common shares withheld for taxes on vested stock awards (in shares)</u>		(91)			
<u>Repurchases of common shares</u>	(5,500)		(5,500)		
<u>Repurchases of common shares (in shares)</u>		(65)			
<u>Share-based compensation</u>	16,072		16,072		
<u>Other comprehensive income (loss), net of tax</u>	(237)				(237)
<u>Balance at Oct. 02, 2020</u>	451,249	\$ 423,856	52,197	(6,454)	(18,350)
<u>Balance (in shares) at Oct. 02, 2020</u>		35,160			
<u>Balance at Jul. 03, 2020</u>	431,898	\$ 423,856	45,338	(14,712)	(22,584)
<u>Balance (in shares) at Jul. 03, 2020</u>		35,155			
<u>Consolidated net income</u>	8,258			8,258	
<u>Common shares issued under stock plans (in shares)</u>		8			
<u>Common shares withheld for taxes on vested stock awards</u>	(366)		(366)		
<u>Common shares withheld for taxes on vested stock awards (in shares)</u>		(3)			
<u>Share-based compensation</u>	7,225		7,225		
<u>Other comprehensive income (loss), net of tax</u>	4,234				4,234
<u>Balance at Oct. 02, 2020</u>	451,249	\$ 423,856	52,197	(6,454)	(18,350)
<u>Balance (in shares) at Oct. 02, 2020</u>		35,160			
<u>Balance at Dec. 31, 2020</u>	476,809	\$ 423,856	58,992	6,202	(12,241)

<u>Balance (in shares) at Dec. 31, 2020</u>	35,163				
<u>Consolidated net income</u>	36,577			36,577	
<u>Common shares issued under stock plans (in shares)</u>	658				
<u>Common shares withheld for taxes on vested stock awards</u>	(30,672)		(30,672)		
<u>Common shares withheld for taxes on vested stock awards (in shares)</u>	(221)				
<u>Share-based compensation</u>	20,169		20,169		
<u>Other comprehensive income (loss), net of tax</u>	(2,770)				(2,770)
<u>Balance at Oct. 01, 2021</u>	500,113	\$ 423,856	48,489	42,779	(15,011)
<u>Balance (in shares) at Oct. 01, 2021</u>	35,600				
<u>Balance at Jul. 02, 2021</u>	493,064	\$ 423,856	52,243	29,176	(12,211)
<u>Balance (in shares) at Jul. 02, 2021</u>	35,489				
<u>Consolidated net income</u>	13,603			13,603	
<u>Common shares issued under stock plans (in shares)</u>	199				
<u>Common shares withheld for taxes on vested stock awards</u>	(12,244)		(12,244)		
<u>Common shares withheld for taxes on vested stock awards (in shares)</u>	(88)				
<u>Share-based compensation</u>	8,490		8,490		
<u>Other comprehensive income (loss), net of tax</u>	(2,800)				(2,800)
<u>Balance at Oct. 01, 2021</u>	\$ 500,113	\$ 423,856	\$ 48,489	\$ 42,779	\$ (15,011)
<u>Balance (in shares) at Oct. 01, 2021</u>	35,600				

**CONSOLIDATED  
STATEMENTS OF CASH  
FLOWS - USD (\$)  
\$ in Thousands**

**9 Months Ended**  
**Oct. 01,    Oct. 02,**  
**2021        2020**

**Cash flows from operating activities:**

Consolidated net income	\$ 36,577	\$ 31,865
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**Adjustments to reconcile consolidated net income to net cash provided by operating activities:**

Depreciation and amortization	30,613	28,363
Provision for inventory excess and obsolescence	3,187	3,550
Share-based compensation	20,169	16,072
Deferred income taxes	(3,064)	(3,455)
Inventory acquisition fair value adjustments	280	188
Other	934	427

**Changes in assets and liabilities which (used)/provided cash, excluding effects from business acquisitions:**

Accounts receivable	(21,458)	9,655
Inventories	(11,943)	11,937
Prepaid income taxes, income taxes receivable, prepaid expenses and other current assets	(7,043)	5,741
Accounts payable, income taxes payable, accrued expenses and other current liabilities	19,511	(13,134)
Other non-current assets and liabilities	(1,851)	2,477
Cash provided by operating activities	65,912	93,686

**Cash flows from investing activities:**

Acquisition of businesses, net of cash acquired and working capital adjustments	(285,181)	
Purchases of property, plant and equipment	(14,759)	(7,164)
Payment of contingent consideration related to acquisition of technology assets	(2,200)	(2,632)
Cash used in investing activities	(302,140)	(9,796)

**Cash flows from financing activities:**

Borrowings under revolving credit facilities	280,000	
Repayments under term loan and revolving credit facilities	(24,036)	(34,017)
Payments of debt issuance costs		(1,614)
Payments of withholding taxes from share-based awards	(30,672)	(8,302)
Repurchases of common shares		(5,500)
Payment of contingent consideration related to acquisitions	(1,836)	(1,135)
Purchase of building under finance lease	(8,743)	
Payments of deferred and escrowed purchase price related to acquisitions		(5,772)
Other financing activities	(423)	(855)
Cash provided by (used in) financing activities	214,290	(57,195)
Effect of exchange rates on cash and cash equivalents	(721)	991
Increase (decrease) in cash and cash equivalents	(22,659)	27,686
Cash and cash equivalents, beginning of the period	125,054	78,944
Cash and cash equivalents, end of the period	102,395	106,630

**Supplemental disclosure of cash flow information:**

Cash paid for interest	3,679	4,099
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<u>Cash paid for income taxes</u>	9,231	4,350
<u>Income tax refunds received</u>	\$ 1,201	\$ 4,613



## Basis of Presentation

**9 Months Ended  
Oct. 01, 2021**

[Accounting Policies](#)

[\[Abstract\]](#)

[Basis of Presentation](#)

### 1. Basis of Presentation

Novanta Inc. and its subsidiaries (collectively referred to as “Novanta”, the “Company”, “we”, “us”, “our”) is a leading global supplier of core technology solutions that give medical and advanced industrial original equipment manufacturers (“OEMs”) a competitive advantage. Novanta combines deep proprietary technology expertise and competencies in photonics, vision and precision motion with a proven ability to solve complex technical challenges. This enables Novanta to engineer core components and sub-systems that deliver extreme precision and performance, tailored to the customers’ demanding applications.

The accompanying unaudited interim consolidated financial statements have been prepared by the Company in United States (“U.S.”) dollars and pursuant to the rules and regulations of the United States Securities and Exchange Commission (“SEC”), the instructions to Form 10-Q and the provisions of Regulation S-X pertaining to interim financial statements. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the U.S. have been condensed or omitted. The interim consolidated financial statements and notes included in this report should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. In the opinion of management, these interim consolidated financial statements include all adjustments and accruals of a normal and recurring nature necessary to fairly state the results of the interim periods presented. The results for interim periods are not necessarily indicative of results to be expected for the full year or for any future periods.

The Company’s unaudited interim consolidated financial statements are prepared for each quarterly period ending on the Friday closest to the end of the calendar quarter, with the exception of the fourth quarter which always ends on December 31.

#### *Use of Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Estimates and assumptions are reviewed on an on-going basis and the effects of revisions are reflected in the period in which such revisions are deemed to be necessary. The Company evaluates its estimates based on historical experience, current conditions, including estimated economic implications of the COVID-19 pandemic, and various other assumptions that it believes are reasonable under the circumstances. The accounting estimates assessed included, but were not limited to, the Company’s allowance for doubtful accounts and credit losses, inventory and related reserves and the carrying value of goodwill and other long-lived assets. While there was not a material change to the consolidated financial statements related to these estimates as of and for the nine months ended October 1, 2021, the Company’s future assessment of the magnitude and duration of the COVID-19 pandemic, as well as other factors, could result in material impacts to the Company’s consolidated financial statements in future reporting periods.

#### *Recent Accounting Pronouncements*

The following table provides a brief description of recent Accounting Standards Updates (“ASU”) issued by the Financial Accounting Standards Board (“FASB”):

Standard	Description	Effective Date	Effect on the Financial Statements or Other Significant Matters
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In December 2019, the FASB issued ASU 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes.”	ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to the general principles of Accounting Standards Codification (“ASC”) 740, “Income Taxes”, including: (i) the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items; (ii) the exception to the requirement to recognize a deferred tax liability for equity method investments when a foreign subsidiary becomes an equity method investment (or vice-versa); and (iii) the exception for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. ASU 2019-12 also simplifies GAAP for other areas of ASC 740 by clarifying and amending the existing guidance.	January 1, 2021. Early adoption is permitted.	The Company adopted ASU 2019-12 during the first quarter of 2021. The adoption of ASU 2019-12 did not have a material impact on the Company’s consolidated financial statements.
In March 2020, the FASB issued ASU 2020-04, “Reference rate reform (Topic 848): Facilitation of the effects of reference rate reform on financial reporting.”	ASU 2020-04 provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met.	Upon issuance. ASU 2020-04 is elective.	The Company does not expect the impact of ASU 2020-04 to be material to its consolidated financial statements.
In October 2021, the FASB issued ASU 2021-08, “Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers.”	ASU 2021-08 requires that entities recognize and measure contract assets and liabilities acquired in a business combination in accordance with ASC 606, “Revenue from Contracts with Customers”. ASU 2021-08 also applies to contract assets or liabilities from other contracts to which the provisions of ASC 606 apply. The amendments in ASU 2021-08 do not affect the accounting for other assets or liabilities that may arise from revenue contracts with customers in accordance with ASC 606, such as refund	January 1, 2023. Early adoption is permitted.	The Company is evaluating the impact of the adoption of ASU 2021-08 on its consolidated financial statements.

liabilities, or in a business combination, such as customer-related intangible assets and contract-based intangible assets.

## Revenue

**9 Months Ended  
Oct. 01, 2021**

[Revenue From Contract  
With Customer \[Abstract\]  
Revenue](#)

### **2. Revenue**

The Company recognizes revenue when control of promised goods or services is transferred to customers. The transfer of control generally occurs upon shipment when title and risk of loss pass to the customer. The vast majority of the Company's revenue is generated from the sale of distinct products. Revenue is measured as the amount of consideration the Company expects to receive in exchange for such products, which is generally at contractually stated prices. Sales taxes and value added taxes collected concurrently with revenue generating activities are excluded from revenue.

#### ***Performance Obligations***

Substantially all of the Company's revenue is recognized at a point in time, upon shipment, rather than over time.

At the request of its customers, the Company may perform professional services, generally for the maintenance and repair of products previously sold to those customers and for engineering services. Professional services for the maintenance and repair of products are typically short in duration, mostly less than one month, and generally involve a single distinct performance obligation. The related revenue is recognized at a point in time when control transfers to the customer upon completion of professional services. The consideration expected to be received in exchange for such services is typically the contractually stated amount. Certain engineering services are longer in duration and the related revenue is recognized over time, as the Company has a right to consideration from a customer, based on the corresponding value to the customer from the Company's performance completed to date. Engineering services aggregate to less than 3% of the Company's consolidated revenue.

The Company occasionally sells separately priced non-standard/extended warranty services or preventative maintenance plans with the sale of products. The transfer of control over the service plans is over time. The Company recognizes the related revenue ratably over the terms of the service plans. The transaction price of a contract is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are generally determined based on the prices charged to customers or using the expected cost plus a margin.

#### ***Shipping & Handling Costs***

The Company accounts for shipping and handling activities that occur after the transfer of control over the related goods as fulfillment activities rather than performance obligations. The shipping and handling fees charged to customers are recognized as revenue and the related costs are recorded in cost of revenue at the time of transfer of control.

#### ***Warranties***

The Company generally provides warranties for its products. The standard warranty period is typically 12 months to 24 months for the Photonics and Precision Motion segments and 12 months to 36 months for the Vision segment. The standard warranty period for product sales is accounted for under the provisions of ASC 450, "Contingencies," as the Company has the ability to ascertain the likelihood of the liability and can reasonably estimate the amount of the liability. A provision for the estimated cost related to warranty is recorded as cost of revenue at the time revenue is recognized. The Company's estimate of costs to service the warranty obligations is based on historical experience and expectations of future conditions. To the extent that the Company's experience in warranty claims or costs associated with servicing those claims differ

from the original estimates, revisions to the estimated warranty liability are recorded at that time, with an offsetting adjustment to cost of revenue.

### ***Practical Expedients and Exemptions***

The Company expenses incremental direct costs of obtaining a contract when incurred if the expected amortization period is one year or less. These costs are recorded within selling, general and administrative expenses in the consolidated statement of operations.

The Company does not adjust the promised amount of consideration for the effects of a financing component because the transfer of a promised good to a customer and the customer's payment for that good are typically one year or less. The Company does not disclose the value of the remaining performance obligation for contracts with an original expected length of one year or less.

### ***Contract Liabilities***

Contract liabilities consist of deferred revenue and advance payments from customers, including amounts that are refundable. These contract liabilities are classified as either current or long-term liabilities in the consolidated balance sheet based on the timing of when the Company expects to recognize the related revenue. As of October 1, 2021 and December 31, 2020, contract liabilities were \$9.5 million and \$6.5 million, respectively, and are included in accrued expenses and other current liabilities and other liabilities in the accompanying consolidated balance sheets. The increase in the contract liability balance during the nine months ended October 1, 2021 is primarily due to cash payments received in advance of satisfying performance obligations and acquired contract liabilities of \$2.0 million from current year acquisitions, partially offset by \$4.9 million of revenue recognized during the period that was included in the contract liability balance at December 31, 2020.

### ***Disaggregated Revenue***

See Note 16 for the Company's disaggregation of revenue by segment, geography and end market.

## Business Combinations

**9 Months Ended  
Oct. 01, 2021**

[Business Combinations](#)

[\[Abstract\]](#)

[Business Combinations](#)

### 3. Business Combinations

On August 30, 2021, the Company acquired 100% of the outstanding shares of ATI Industrial Automation, Inc. ("ATI"), an Apex, North Carolina-based leading supplier of intelligent end-of-arm technology solutions to OEMs for advanced industrial and surgical robots for an initial cash purchase price of \$170.0 million, net of cash acquired, and \$51.9 million estimated fair value of contingent consideration. The contingent consideration will be payable in 2022 based on a multiple of actual standalone ATI Adjusted EBITDA, as defined in the purchase and sale agreement, for the fiscal year ending December 31, 2021. The initial cash purchase price was financed with borrowings under the Company's revolving credit facility and cash available on hand. The addition of ATI is expected to complement and add intelligent technology solutions to further expand the Company's position in mission critical robotic applications. ATI will contribute to the Company's operations and growth within the Precision Motion reportable segment.

On August 31, 2021, the Company acquired 100% of the outstanding shares of Schneider Electric Motion USA, Inc. ("SEM"), a Marlborough, Connecticut-based manufacturer of integrated stepper motors and electronic controls for automation equipment for a total purchase price of \$115.1 million, net of cash acquired, subject to customary working capital adjustments. The acquisition was financed with borrowings under our revolving credit facility. The addition of SEM is expected to complement and expand the Company's presence in life science applications and solutions for industrial automation applications within the Precision Motion reportable segment.

#### *Allocation of Purchase Price*

The acquisitions of ATI and SEM have been accounted for as business combinations. The purchase price for each acquisition is allocated based upon a valuation of the fair values of assets acquired and liabilities assumed as of the acquisition date. The fair values of intangible assets were based on valuations using a discounted cash flow income approach and a relief from royalty income approach, with estimates and assumptions developed by management. The process for estimating the fair values of identifiable intangible assets requires the use of significant estimates and assumptions, including estimating future cash flows and developing appropriate discount rates. The excess of the purchase price over the fair values of tangible assets, identifiable intangible assets and assumed liabilities was recorded as goodwill for each acquisition. The Company's estimates and assumptions in determining the estimated fair values of certain assets and liabilities are subject to change within the measurement period (up to one year from the acquisition date) as a result of additional information obtained with regards to facts and circumstances that existed as of the acquisition date.

#### *ATI*

Based upon a preliminary valuation, the total purchase price for ATI was allocated as follows (in thousands):

	Purchase Price
	Allocation
Cash	\$ 10,709
Accounts receivable	12,596
Inventories	17,431
Property, plant and equipment	4,195
Intangible assets	52,400

Goodwill	143,851
Deferred tax assets	345
Other assets	11,425
<b>Total assets acquired</b>	<b>252,952</b>
Accounts payable	5,135
Deferred tax liabilities	228
Other liabilities	14,938
<b>Total liabilities assumed</b>	<b>20,301</b>
Total assets acquired, net of liabilities assumed	232,651
Less: cash acquired	10,709
Less: contingent consideration	51,900
<b>Initial purchase price, net of cash acquired</b>	<b>\$ 170,042</b>

The purchase price allocation is preliminary as the Company is in the process of collecting additional information for the valuation of inventories, property plant and equipment, intangible assets, other liabilities, contingent consideration and unrecognized tax benefits.

The fair value of intangible assets for ATI is comprised of the following (dollar amounts in thousands):

	<b>Estimated Fair Value</b>	<b>Weighted Average Amortization Period</b>
Developed technologies	\$ 19,800	15 years
Customer relationships	23,600	15 years
Trademarks and trade names	5,600	15 years
Backlog	3,400	1 year
<b>Total</b>	<b>\$ 52,400</b>	

The purchase price allocation resulted in \$52.4 million of identifiable intangible assets and \$143.9 million of goodwill. Goodwill amounting to \$143.4 million is expected to be deductible for U.S. income tax purposes. Intangible assets are being amortized over their weighted average useful lives primarily based upon the pattern in which anticipated economic benefits from such assets are expected to be realized. The goodwill recorded represents the anticipated incremental value of future cash flows potentially attributable to: (i) ATI's ability to grow the business with existing and new customers, including leveraging the Company's customer base; (ii) ATI's ability to grow the business through new product introductions; and (iii) cost improvements due to the integration of ATI's operations into the Company's existing infrastructure.

The operating results of ATI were included in the Company's results of operations beginning on August 31, 2021. ATI contributed revenues of \$8.7 million and a profit before income taxes of \$0.8 million to the Company's operating results for the nine months ended October 1, 2021. ATI's profit before income taxes for the period from the acquisition date through October 1, 2021 included amortization of inventory fair value adjustments and amortization of purchased intangible assets of \$0.8 million.

### **SEM**

Based upon a preliminary valuation, the total purchase price for SEM was allocated as follows (in thousands):

	<b>Purchase Price Allocation</b>
Cash	\$ 3,881
Accounts receivable	4,240
Inventories	2,499



Property, plant and equipment	452
Intangible assets	54,570
Goodwill	70,064
Other assets	776
Total assets acquired	136,482
Accounts payable	1,325
Deferred tax liabilities	12,387
Other liabilities	3,750
Total liabilities assumed	17,462
Total assets acquired, net of liabilities assumed	119,020
Less: cash acquired	3,881
Total purchase price, net of cash acquired	\$ 115,139

The purchase price allocation is preliminary as the Company is in the process of collecting additional information for the valuation of inventories, intangible assets, other liabilities and unrecognized tax benefits.

The fair value of intangible assets for SEM is comprised of the following (dollar amounts in thousands):

	Estimated Fair Value	Weighted Average Amortization Period
Developed technologies	\$ 9,110	15 years
Customer relationships	41,740	20 years
Trademarks and trade names	370	4 years
Backlog	3,350	1 year
Total	\$ 54,570	

The purchase price allocation resulted in \$54.6 million of identifiable intangible assets and \$70.1 million of goodwill. As the SEM acquisition was structured as a stock acquisition for income tax purposes, the goodwill is not expected to be deductible for income tax purposes. Intangible assets are being amortized over their weighted average useful lives primarily based upon the pattern in which anticipated economic benefits from such assets are expected to be realized. The goodwill recorded represents the anticipated incremental value of future cash flows potentially attributable to: (i) SEM's ability to grow the business with existing and new customers, including leveraging the Company's customer base; (ii) SEM's ability to grow the business through new product introductions; and (iii) cost improvements due to the integration of SEM's operations into the Company's existing infrastructure.

The operating results of SEM were included in the Company's results of operations beginning on September 1, 2021. SEM contributed revenues of \$2.4 million and a profit before income taxes of \$0.1 million to the Company's operating results for the nine months ended October 1, 2021. SEM's profit before income taxes for the period from the acquisition date through October 1, 2021 included amortization of inventory fair value adjustments and amortization of purchased intangible assets of \$0.5 million.

### ***Unaudited Pro Forma Information***

The pro forma information for all periods presented below includes the effects of business combination accounting resulting from the acquisitions of ATI and SEM, including amortization of inventory fair value adjustments, amortization of intangible assets, interest expense on borrowings in connection with the acquisition, and the related tax effects, assuming that the acquisitions had been

consummated as of January 1, 2020. The pro forma financial information is presented for comparative purposes only and is not necessarily indicative of the results of operations that actually would have been achieved if the acquisitions had taken place on January 1, 2020.

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
Revenue	\$ 197,715	\$ 186,919	\$ 584,051	\$ 508,906
Consolidated net income	\$ 13,995	\$ 9,908	\$ 38,188	\$ 25,551

### *Acquisition Costs*

Acquisition costs are included in restructuring and acquisition related costs in the consolidated statements of operations. Acquisition-related costs for ATI and SEM acquisitions are as follows (in thousands):

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 1, 2021</u>	<u>October 1, 2021</u>	<u>October 1, 2021</u>
ATI	\$ 1,956	\$ 3,321		
SEM	\$ 864	\$ 1,052		

4. Accumulated Other Comprehensive Loss

Changes in accumulated other comprehensive loss was as follows (in thousands):

	Total Accumulated Other Comprehensive Loss	Cumulative Translation Adjustments	Pension Liability Adjustments
Balance at December 31, 2020	\$ (12,241)	\$ (2,296)	\$ (9,945)
Other comprehensive income (loss)	(3,487)	(3,602)	115
Amounts reclassified from accumulated other comprehensive loss	717	—	717
Balance at October 1, 2021	<u>\$ (15,011)</u>	<u>\$ (5,898)</u>	<u>\$ (9,113)</u>

The amounts reclassified from accumulated other comprehensive loss were included in other income (expense) in the consolidated statements of operations.

## Earnings per Common Share

9 Months Ended  
Oct. 01, 2021

### Earnings Per Share

#### [Abstract]

### Earnings per Common Share

#### 5. Earnings per Common Share

Basic earnings per common share is computed by dividing consolidated net income by the weighted average number of common shares outstanding during the period.

For diluted earnings per common share, the denominator includes the dilutive effect of outstanding common share equivalents. For the three and nine months ended October 1, 2021 and October 2, 2020, respectively, weighted average shares outstanding for the diluted earnings per common share included the dilutive effect of outstanding restricted stock units, stock options, and total shareholder return performance-based restricted stock units, determined using the treasury stock method. The dilutive effects of market-based contingently issuable shares are included in the weighted average common share calculation based on the number of shares, if any, that would be issuable as of the end of the reporting period, assuming the end of the reporting period is also the end of the performance period. Dilutive effects of attainment-based contingently issuable shares granted to the former Laser Quantum Limited ("Laser Quantum") noncontrolling interest shareholders, non-GAAP EPS performance-based restricted stock units and operating cash flow performance-based restricted stock units are included in the weighted average common share calculation when the performance targets have been achieved based on the cumulative achievement against the performance targets as of the end of each reporting period.

The following table sets forth the computation of basic and diluted earnings per common share (amounts in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Numerators:</b>				
Consolidated net income	\$ 13,603	\$ 8,258	\$ 36,577	\$ 31,865
<b>Denominators:</b>				
Weighted average common shares outstanding— basic	35,447	35,142	35,366	35,144
Dilutive potential common shares	317	546	405	465
Weighted average common shares outstanding— diluted	35,764	35,688	35,771	35,609
Antidilutive potential common shares excluded from above	1	—	18	17
<b>Earnings per Common Share:</b>				
Basic	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
Diluted	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89

For both the three and nine months ended October 1, 2021, 45 thousand non-GAAP EPS performance-based restricted stock units and 37 thousand operating cash flow performance-based restricted stock units granted to certain members of the executive management team, and 213 thousand shares of restricted stock issued to the former Laser Quantum non-controlling interest shareholders are considered contingently issuable shares and were excluded from the calculation of the denominator as the contingent conditions had not been met as of October 1, 2021.

For both the three and nine months ended October 2, 2020, 73 thousand non-GAAP EPS performance-based restricted stock units granted to certain members of the executive management team and 213 thousand shares of restricted stock issued to the former Laser

Quantum non-controlling interest shareholders were considered contingently issuable shares and were excluded from the calculation of the denominator as the contingent conditions had not been met as of October 2, 2020.

[Fair Value Disclosures](#)

[\[Abstract\]](#)

[Fair Value Measurements](#)

## **6. Fair Value Measurements**

ASC 820, "Fair Value Measurements," establishes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the third is considered unobservable:

- Level 1: Quoted prices for identical assets or liabilities in active markets which the Company can access
- Level 2: Observable inputs other than those described in Level 1
- Level 3: Unobservable inputs

### ***Current Assets and Liabilities***

The Company's cash equivalents are highly liquid investments with original maturities of three months or less, which represent an asset the Company measures at fair value on a recurring basis. The Company determines the fair value of cash equivalents using a market approach based on quoted prices in active markets. The fair values of cash, accounts receivable, income taxes receivable, accounts payable, income taxes payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature.

### ***Foreign Currency Contracts***

The Company addresses market risks from changes in foreign currency exchange rates through a risk management program that includes the use of derivative financial instruments to mitigate certain balance sheet foreign currency transaction exposures. The Company uses foreign currency forward contracts as a part of its strategy to manage exposures related to foreign currency denominated monetary assets and liabilities. The fair value of these foreign currency forward contracts is reported either in other current assets or in other current liabilities as of the end of the period.

### ***Contingent Considerations***

On August 30, 2021, the Company acquired ATI. Under the purchase and sale agreement for the ATI acquisition, the former shareholders of ATI are eligible to receive contingent consideration based on ATI's fiscal year 2021 Adjusted EBITDA, as defined in the purchase and sale agreement. The contingent consideration will be payable in 2022. The preliminary fair value of the contingent consideration of \$51.9 million was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Once the fair value of contingent consideration is finalized, subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. There have been no changes in the fair value of the contingent consideration since the date of the acquisition.

On July 31, 2019, the Company acquired ARGES GmbH ("ARGES"). Under the purchase and sale agreement for the ARGES acquisition, the former owner of ARGES is eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from August 2019 through December 2026. The undiscounted range of possible contingent consideration is zero to €10.0 million (\$11.1 million). If the revenue targets are achieved, the contingent consideration would be payable annually with the first payment due in the first quarter

of 2021. The estimated fair value of the contingent consideration of €7.1 million (\$7.9 million) was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. During 2020, the fair value of the contingent consideration was adjusted to €4.1 million (\$5.1 million). In March 2021, the Company made the first installment payment of €0.4 million (\$0.4 million), which is included in cash flows from financing activities in the consolidated statement of cash flows for the nine months ended October 1, 2021. Based on the revenue performance and revenue projections as of October 1, 2021, the fair value of the contingent consideration was adjusted to €3.7 million (\$4.3 million). There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

On April 16, 2019, the Company acquired Ingenia CAT, S.L. (“Ingenia”). Under the purchase and sale agreement for the Ingenia acquisition, the shareholders of Ingenia are eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from April 2019 through March 2022. The undiscounted range of possible contingent consideration is zero to €8.0 million (\$9.0 million). If the revenue targets are achieved, the contingent consideration would be payable in cash in three annual installments from 2020 to 2022. The estimated fair value of the contingent consideration of €5.8 million (\$6.6 million) was determined based on the Monte Carlo valuation method and was recorded as part of the purchase price as of the acquisition date. Subsequent changes in the estimated fair value of the contingent consideration liability are recorded in the consolidated statement of operations in restructuring, acquisition, and related costs until the liability is fully settled. Based on the revenue performance and revenue projections for fiscal years 2021 and 2022 as of December 31, 2020, the fair value of the contingent consideration was adjusted to €2.3 million (\$2.9 million). Based on the revenue performance and revenue projections as of April 2, 2021, the fair value of the contingent consideration was adjusted to €2.4 million (\$2.9 million). The Company made the first installment payment of €1.0 million (\$1.1 million) in May 2020 and the second installment payment of €1.2 million (\$1.4 million) in May 2021. These installment payments are reported as cash flows from financing activities in the consolidated statement of cash flows for the respective periods. There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

On December 14, 2016, the Company acquired certain video signal processing and management technologies used in medical visualization solutions. Under the purchase and sale agreement, the former owners are eligible to receive contingent consideration based on the achievement of certain revenue targets by the Company from 2018 to 2021 from products utilizing the acquired technologies. The undiscounted range of possible contingent consideration is zero to €5.5 million (\$6.6 million). If the revenue targets are achieved, the contingent consideration would be payable in cash in four installments from 2019 to 2022. As the acquired assets did not meet the definition of a business, the fair value of the contingent consideration is recognized when probable and estimable and is capitalized as part of the cost of the acquired assets. Subsequent changes in the estimated fair value of this contingent liability are recorded as adjustments to the carrying value of the assets acquired and amortized over the remaining useful life of the underlying assets. The Company made the first installment payment of €2.4 million (\$2.6 million) in February 2020 and the second installment payment of €1.8 million (\$2.2 million) in February 2021. These installment payments are reported as cash flows from investing activities in the consolidated statement of cash flows for the respective periods. There were no other changes in the fair value of the contingent consideration during the three and nine months ended October 1, 2021.

### ***Summary by Fair Value Hierarchy***

The following table summarizes the fair values of the Company’s assets and liabilities measured at fair value on a recurring basis as of October 1, 2021 (in thousands):

Quoted Prices in Active Markets for	Significant Other	Significant Other Unobservable
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	<u>Fair Value</u>	<u>Identical Assets (Level 1)</u>	<u>Observable Inputs (Level 2)</u>	<u>Inputs (Level 3)</u>
<b>Assets</b>				
Cash equivalents	\$ 3,089	\$ 3,089	\$ —	\$ —
Prepaid expenses and other current assets:				
Foreign currency forward contracts	202	—	202	—
	<u>\$ 3,291</u>	<u>\$ 3,089</u>	<u>\$ 202</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and other current liabilities:				
Contingent considerations				
- Current	\$ 55,469	\$ —	\$ —	\$ 55,469
Foreign currency forward contracts	10	—	10	—
Other liabilities:				
Contingent considerations				
- Long-term	3,605	—	—	3,605
	<u>\$ 59,084</u>	<u>\$ —</u>	<u>\$ 10</u>	<u>\$ 59,074</u>

The following table summarizes the fair values of the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2020 (in thousands):

	<u>Fair Value</u>	<u>Quoted Prices in Active Markets for Identical Assets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Other Unobservable Inputs (Level 3)</u>
<b>Assets</b>				
Cash equivalents	\$ 11,047	\$ 11,047	\$ —	\$ —
Prepaid expenses and other current assets:				
Foreign currency forward contracts	27	—	27	—
	<u>\$ 11,074</u>	<u>\$ 11,047</u>	<u>\$ 27</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and				

other current liabilities:				
Contingent considerations				
- Current	\$ 4,280	\$ —	\$ —	\$ 4,280
Foreign currency forward contracts				
	—	—	—	—
Other liabilities:				
Contingent considerations				
- Long-term	7,276	—	—	7,276
	<u>\$ 11,556</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 11,556</u>

Changes in the fair value of Level 3 contingent considerations during the nine months ended October 1, 2021 were as follows (in thousands):

	Contingent Considerations
Balance at December 31, 2020	\$ 11,556
Acquisition of ATI	51,900
Payments	(4,036)
Fair value adjustments	26
Effect of foreign exchange rates	(372)
Balance at October 1, 2021	<u>\$ 59,074</u>

The following table provides qualitative information associated with the fair value measurement of the Company's Level 3 liabilities:

Liability	October 1, 2021 Fair Value (in thousands)	Valuation Technique	Unobservable Inputs	Percentage Applied
Contingent consideration (ATI)	\$51,900	Monte Carlo method	Historical and projected adjusted	N/A
			EBITDA for fiscal year 2021	
			EBITDA risk premium	7.2%
			EBITDA volatility	27.0%
			Credit spread	2.1%
Contingent consideration (ARGES)	\$4,282	Monte Carlo method	Historical and projected revenues from August 2019 through December 2026	N/A
			Revenue volatility	21.0%
			Cost of debt	2.6%
			Discount rate	3.7%
Contingent consideration (Ingenia)	\$1,493	Monte Carlo method	Historical and projected revenues from April 2019 through March 2022	N/A
			Revenue volatility	38.5%
			Cost of debt	3.1%

			Discount rate	9.6%
Contingent consideration (Other)	\$1,399	Discounted cash flow method	Historical and projected revenues for fiscal years 2018 to 2021	N/A
			Revenue discount rate	22.8%

Increases or decreases in the unobservable inputs noted above would result in a higher or lower fair value measurement.

See Note 10 to Consolidated Financial Statements for a discussion of the estimated fair value of the Company's outstanding debt.

## 7. Foreign Currency Contracts

The Company addresses market risks from changes in foreign currency exchange rates through a risk management program that includes the use of derivative financial instruments to mitigate certain foreign currency transaction exposures from future settlement of non-functional currency monetary assets and liabilities as of the end of a period. The Company does not enter into derivative transactions for speculative purposes. Gains and losses on derivative financial instruments substantially offset losses and gains on the underlying hedged exposures. Furthermore, the Company manages its exposures to counterparty risks on derivative instruments by entering into contracts with a diversified group of major financial institutions and by actively monitoring outstanding positions.

As of October 1, 2021, the aggregate notional amount and fair value of the Company's foreign currency forward contracts was \$48.3 million and a net gain of \$0.2 million, respectively. As of December 31, 2020, the aggregate notional amount and fair value of the Company's foreign currency forward contracts was \$28.5 million and a net gain of less than \$0.1 million, respectively.

The Company recognized an aggregate net gain of \$0.3 million and \$0.9 million for the three and nine months ended October 1, 2021, respectively, and an aggregate net gain of \$1.0 million and \$1.4 million for the three and nine months ended October 2, 2020, respectively. These amounts were included in foreign exchange transaction gains (losses) in the consolidated statement of operations for all periods presented.

## Goodwill and Intangible Assets

9 Months Ended  
Oct. 01, 2021

[Goodwill And Intangible Assets Disclosure \[Abstract\]](#)

[Goodwill and Intangible Assets](#)

### 8. Goodwill and Intangible Assets

#### Goodwill

Goodwill is recorded when the consideration for a business combination exceeds the fair value of net tangible and identifiable intangible assets acquired. The Company tests its goodwill balances for impairment annually as of the beginning of the second quarter or more frequently if indicators are present or changes in circumstances suggest that an impairment may exist. The Company performed the most recent annual goodwill and indefinite-lived intangible asset impairment test as of the beginning of the second quarter of 2021 and noted no impairment.

The following table summarizes changes in goodwill during the nine months ended October 1, 2021 (in thousands):

Balance at beginning of the period	\$ 285,980
Goodwill acquired from acquisitions	213,915
Effect of foreign exchange rate changes	(6,955)
Balance at end of the period	<u>\$ 492,940</u>

Goodwill by reportable segment as of October 1, 2021 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 215,453	\$ 161,885	\$ 266,831	\$ 644,169
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 112,992</u>	<u>\$ 130,163</u>	<u>\$ 249,785</u>	<u>\$ 492,940</u>

Goodwill by reportable segment as of December 31, 2020 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 218,517	\$ 165,195	\$ 53,497	\$ 437,209
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 116,056</u>	<u>\$ 133,473</u>	<u>\$ 36,451</u>	<u>\$ 285,980</u>

#### Intangible Assets

Intangible assets as of October 1, 2021 and December 31, 2020, respectively, are summarized as follows (in thousands):

	October 1, 2021			December 31, 2020		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortizable intangible assets:						
Patents and developed technologies	\$ 190,485	\$ (118,535)	\$ 71,950	\$ 164,430	\$ (110,572)	\$ 53,858

Customer relationships	229,369	(101,546)	127,823	167,429	(92,892)	74,537
Customer backlog	6,753	(563)	6,190	—	—	—
Trademarks and trade names	24,052	(12,015)	12,037	18,367	(11,268)	7,099
Amortizable intangible assets	450,659	(232,659)	218,000	350,226	(214,732)	135,494
Non-amortizable intangible assets:						
Trade names	13,027	—	13,027	13,027	—	13,027
Totals	<u>\$ 463,686</u>	<u>\$ (232,659)</u>	<u>\$ 231,027</u>	<u>\$ 363,253</u>	<u>\$ (214,732)</u>	<u>\$ 148,521</u>

All definite-lived intangible assets are amortized either on a straight-line basis or an economic benefit basis over their remaining estimated useful life. Amortization expense for patents and developed technologies is included in cost of revenue in the accompanying consolidated statements of operations. Amortization expense for customer relationships and definite-lived trademarks, trade names and other intangibles is included in operating expenses in the accompanying consolidated statements of operations. Amortization expense was as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Amortization expense – cost of revenue	\$ 3,316	\$ 2,820	\$ 9,275	\$ 8,270
Amortization expense – operating expenses	4,139	3,533	11,300	10,388
Total amortization expense	<u>\$ 7,455</u>	<u>\$ 6,353</u>	<u>\$ 20,575</u>	<u>\$ 18,658</u>

Estimated amortization expense for each of the five succeeding years and thereafter as of October 1, 2021 was as follows (in thousands):

Year Ending December 31,	Cost of Revenue	Operating Expenses	Total
2021 (remainder of year)	\$ 4,029	\$ 5,294	\$ 9,323
2022	13,854	27,032	40,886
2023	12,544	20,998	33,542
2024	10,170	17,631	27,801
2025	8,579	14,917	23,496
Thereafter	22,774	60,178	82,952
Total	<u>\$ 71,950</u>	<u>\$ 146,050</u>	<u>\$ 218,000</u>

**Supplementary Balance  
Sheet Information**

**9 Months Ended  
Oct. 01, 2021**

[Organization Consolidation And Presentation Of  
Financial Statements \[Abstract\]](#)

[Supplementary Balance Sheet Information](#)

**9. Supplementary Balance Sheet Information**

The following tables provide the details of selected balance sheet items as of the periods indicated (in thousands):

***Inventories***

	October 1, 2021	December 31, 2020
Raw materials	\$ 75,445	\$ 55,657
Work-in-process	21,409	15,487
Finished goods	20,781	20,234
Demo and consigned inventory	1,787	1,359
<b>Total inventories</b>	<b>\$ 119,422</b>	<b>\$ 92,737</b>

***Accrued Expenses and Other Current Liabilities***

	October 1, 2021	December 31, 2020
Accrued compensation and benefits	\$ 20,546	\$ 12,510
Accrued warranty	4,527	4,919
Contract liabilities, current portion	9,190	6,173
Finance lease obligations	590	9,720
Accrued earn-out and contingent considerations	55,469	10,796
Other	14,184	9,662
<b>Total</b>	<b>\$ 104,506</b>	<b>\$ 53,780</b>

***Accrued Warranty***

	Nine Months Ended	
	October 1, 2021	October 2, 2020
Balance at beginning of the period	\$ 4,919	\$ 5,756
Provision charged to cost of revenue	1,215	1,255
Warranty liabilities acquired from acquisitions	541	—
Use of provision	(2,075)	(1,941)
Foreign currency exchange rate changes	(73)	32
<b>Balance at end of the period</b>	<b>\$ 4,527</b>	<b>\$ 5,102</b>



***Other Long Term Liabilities***

	October 1, 2021	December 31, 2020
Finance lease obligations	\$ 5,461	\$ 5,908
Accrued pension liabilities	326	1,511
Accrued contingent considerations	3,605	7,276
Other	2,352	2,471
Total	<u>\$ 11,744</u>	<u>\$ 17,166</u>

## Debt

**9 Months Ended  
Oct. 01, 2021**

### [Debt Disclosure \[Abstract\]](#) [Debt](#)

#### 10. Debt

Debt consisted of the following (in thousands):

	October 1, 2021	December 31, 2020
Senior Credit Facilities – term loan	\$ 5,238	\$ 5,545
Less: unamortized debt issuance costs	(31)	(37)
Total current portion of long-term debt	<u>\$ 5,207</u>	<u>\$ 5,508</u>
Senior Credit Facilities – term loan	\$ 90,092	\$ 99,534
Senior Credit Facilities – revolving credit facility	355,288	99,761
Less: unamortized debt issuance costs	(3,549)	(4,368)
Total long-term debt	<u>\$ 441,831</u>	<u>\$ 194,927</u>
Total Senior Credit Facilities	<u><u>\$ 447,038</u></u>	<u><u>\$ 200,435</u></u>

#### *Senior Credit Facilities*

On December 31, 2019, the Company entered into an amended and restated credit agreement (the “Third Amended and Restated Credit Agreement”) with existing lenders for an aggregate credit facility of \$450.0 million, consisting of a \$100.0 million U.S. dollar equivalent euro-denominated (approximately €90.2 million) 5-year term loan facility and a \$350.0 million 5-year revolving credit facility (collectively, the “Senior Credit Facilities”). The Senior Credit Facilities mature in December 2024 and includes an uncommitted “accordion” feature pursuant to which the commitments under the revolving credit facility may be increased by an additional \$200.0 million in aggregate, subject to certain customary conditions.

On March 27, 2020, the Company entered into an amendment (the “First Amendment”) to the Third Amended and Restated Credit Agreement and exercised a portion of the uncommitted accordion feature. The First Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$145.0 million, from \$350.0 million to \$495.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

The outstanding principal balance under the term loan facility is payable in quarterly installments of €1.1 million beginning in March 2020, with the remaining balance due upon maturity. The Company may make additional principal payments at any time, which will reduce the next quarterly installment payment due. Borrowings under the revolving credit facility may be repaid at any time through December 2024. The Company made principal payments of €3.4 million (\$4.0 million) towards its term loan and \$20.0 million towards its revolving credit facility during the nine months ended October 1, 2021.

The Company is required to satisfy certain financial and non-financial covenants under the Third Amended and Restated Credit Agreement. The Third Amended and Restated Credit Agreement also contains customary events of default. The Company was in compliance with these covenants as of October 1, 2021.

#### *Liens*

The Company's obligations under the Senior Credit Facilities are secured, on a senior basis, by a lien on substantially all of the assets of Novanta Inc.

***Fair Value of Debt***

As of October 1, 2021 and December 31, 2020, the outstanding balance of the Company's debt approximated its fair value based on current rates available to the Company for debt of similar maturities. The fair value of the Company's debt is classified as Level 2 under the fair value hierarchy.

## Leases

**9 Months Ended  
Oct. 01, 2021**

[Leases \[Abstract\]](#)

[Leases](#)

### 11. Leases

Most leases held by the Company expire between 2021 and 2034. In the U.K., where longer lease terms are more common, the Company has a land lease that extends through 2078. Certain leases include one or more options to renew, with renewal terms that can extend the lease term from one to 10 years, and options to terminate the leases within one year. The exercise of lease renewal or termination options is at the Company's sole discretion; therefore, the majority of renewals to extend the lease terms are not included in the Company's right-of-use assets and operating lease liabilities as they are not reasonably certain of being exercised. The Company regularly evaluates the renewal options and includes the renewal periods in the lease term when they are reasonably certain of being exercised. The depreciable lives of the right-of-use assets and leasehold improvements are limited to the expected lease terms.

The following table summarizes the components of lease costs (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Operating lease cost	\$ 2,418	\$ 1,786	\$ 6,213	\$ 5,693
Finance lease cost				
Amortization of right-of-use assets	149	253	451	748
Interest on lease liabilities	85	108	257	326
Variable lease cost	275	320	834	1,043
Total lease cost	<u>\$ 2,927</u>	<u>\$ 2,467</u>	<u>\$ 7,755</u>	<u>\$ 7,810</u>

The following table provides additional details of balance sheet information related to the Company's leases (in thousands, except lease term and discount rate):

	<b>October 1, 2021</b>	<b>December 31, 2020</b>
<b>Operating leases</b>		
Operating lease right-of-use assets	<u>\$ 43,459</u>	<u>\$ 34,444</u>
Current portion of operating lease liabilities	\$ 7,575	\$ 6,188
Operating lease liabilities	<u>40,850</u>	<u>32,802</u>
Total operating lease liabilities	<u>\$ 48,425</u>	<u>\$ 38,990</u>
<b>Finance leases</b>		
Property, plant and equipment, gross	\$ 9,582	\$ 19,819
Accumulated depreciation	(4,918)	(4,934)
Finance lease assets included in property, plant and equipment, net	<u>\$ 4,664</u>	<u>\$ 14,885</u>
Accrued expenses and other current liabilities	\$ 590	\$ 9,720

Other liabilities	5,461	5,908
Total finance lease liabilities	<u>\$ 6,051</u>	<u>\$ 15,628</u>

**Weighted-average remaining lease term (in years):**

Operating leases	8.4	9.3
Finance leases	7.8	3.5

**Weighted-average discount rate:**

Operating leases	4.96%	5.50%
Finance leases	5.54%	3.00%

The following table provides additional details of cash flow information related to the Company's leases (in thousands):

	<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>
<b>Cash paid for amounts included in lease liabilities:</b>		
Operating cash flows from finance leases	\$ 257	\$ 357
Operating cash flows from operating leases	\$ 5,562	\$ 5,088
Financing cash flows from finance leases	\$ 9,166	\$ 1,034
<b>Supplemental non-cash information:</b>		
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 15,340	\$ 3,050

During the nine months ended October 1, 2021, the Company paid \$8.7 million upon the exercise of an option to purchase a building under a finance lease agreement in Germany. The cash payment is presented as a cash outflow from financing activities in the consolidated statement of cash flows.

Future minimum lease payments under operating and finance leases expiring subsequent to October 1, 2021, including operating leases associated with facilities that have been vacated as a result of the Company's restructuring actions, are summarized as follows (in thousands):

<u>Year Ending December 31,</u>	<u>Operating Leases</u>	<u>Finance Leases</u>
2021 (remainder of year)	\$ 2,141	\$ 227
2022	9,539	907
2023	8,241	930
2024	7,230	954
2025	6,967	954
Thereafter	27,090	3,486
Total minimum lease payments	61,208	7,458
Less: Interest	(12,783)	(1,407)
Present value of lease liabilities	<u>\$ 48,425</u>	<u>\$ 6,051</u>

**Preferred and Common  
Shares and Share-Based  
Compensation**

**9 Months Ended**

**Oct. 01, 2021**

[Disclosure Of Compensation](#)

[Related Costs Sharebased](#)

[Payments \[Abstract\]](#)

[Preferred and Common Shares  
and Share-Based  
Compensation](#)

**12. Preferred and Common Shares and Share-Based Compensation**

***Preferred Shares***

In May 2021, the Company's shareholders approved a special resolution to amend the Company's articles to authorize up to 7.0 million preferred shares for future issuance. The Company's Board of Directors is authorized to designate and issue one or more series of preferred shares, fix the rights, preferences and designation, as deemed necessary or advisable, relating to the preferred shares, provided that no shares of any series may be entitled to more than one vote per share. As of October 1, 2021, no preferred shares had been issued and outstanding.

***Common Share Repurchases***

In October 2018, the Company's Board of Directors approved a share repurchase plan (the "2018 Repurchase Plan"), authorizing the repurchase of \$25.0 million worth of the Company's common shares. In February 2020, the Company's Board of Directors approved a new share repurchase plan (the "2020 Repurchase Plan"), authorizing the repurchase of an additional \$50.0 million worth of the Company's common shares. As of October 1, 2021, the Company had \$59.5 million available for future share repurchases under these share repurchase plans.

***Share-Based Compensation Expense***

The table below summarizes share-based compensation expense recorded in the consolidated statements of operations (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Selling, general and administrative	\$ 4,360	\$ 4,265	\$ 13,123	\$ 10,225
Research and development and engineering	534	1,150	1,776	2,204
Cost of revenue	631	1,589	2,305	3,185
Restructuring, acquisition, and related costs	2,965	221	2,965	458
Total share-based compensation expense	<u>\$ 8,490</u>	<u>\$ 7,225</u>	<u>\$ 20,169</u>	<u>\$ 16,072</u>

Share-based compensation expense reported in selling, general and administrative expenses included expenses related to restricted stock units and deferred stock units granted to the members of the Company's Board of Directors of \$1.1 million and \$1.0 million during the nine months ended October 1, 2021 and October 2, 2020, respectively.

On May 13, 2021, the Company's shareholders approved the Amended and Restated 2010 Incentive Award Plan, which increased the number of shares authorized for issuance under the plan from 4,398,613 shares to 6,148,613 shares, extended the term of the plan through May 13, 2031, and included certain provisions that reflect good corporate governance practices.

***Restricted Stock Units and Deferred Stock Units***

The Company's restricted stock units ("RSUs") have generally been issued with vesting periods ranging from zero to five years and vest based solely on service conditions. Accordingly,

the Company recognizes compensation expense on a straight-line basis over the requisite service period. The Company reduces the compensation expense by an estimated forfeiture rate which is based on anticipated forfeitures and historical forfeiture experience.

Deferred stock units (“DSUs”) are granted to the members of the Company’s Board of Directors. Compensation expense associated with the DSUs is recognized in full on the date of grant, as the DSUs are fully vested and non-forfeitable upon grant. There were 91 thousand and 162 thousand DSUs outstanding as of October 1, 2021 and December 31, 2020, respectively. Outstanding DSUs are included in the calculation of weighted average basic shares outstanding for the respective periods.

The table below summarizes activities relating to RSUs and DSUs issued and outstanding under the Company’s Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	Shares (In thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	625	\$ 58.79
Granted	169	\$ 136.85
Vested	(485)	\$ 51.21
Forfeited	(20)	\$ 103.20
Unvested at October 1, 2021	289	\$ 113.94
Expected to vest as of October 1, 2021	272	

The total fair value of RSUs and DSUs that vested during the nine months ended October 1, 2021 was \$68.0 million based on the market price of the underlying shares on the date of vesting.

### ***Performance Stock Units***

The Company typically grants two types of annual performance-based stock awards to certain members of the executive management team: non-GAAP EPS performance-based restricted stock units (“EPS-PSUs”) and relative total shareholder return performance-based restricted stock units (“TSR-PSUs”). Both types of performance-based restricted stock units generally cliff vest on the first day following the end of the three-year performance period.

The number of common shares to be issued upon settlement following vesting of the EPS-PSUs is determined based on the Company’s cumulative non-GAAP EPS over a three-year performance period against the performance targets established by the Company’s Board of Directors at the time of grant and will be in the range of zero to 200% of the target number of shares. The Company recognizes compensation expense ratably over the performance period based on the number of shares that are deemed probable of vesting at the end of the three-year performance cycle. This probability assessment is performed quarterly and the cumulative effect of a change in the estimated compensation expense, if any, is recognized in the consolidated statement of operations in the period in which such determination is made.

The number of common shares to be issued upon settlement following vesting of the TSR-PSUs is determined based on the relative market performance of the Company’s common shares compared to the Russell 2000 Index over a three-year performance period using a payout formula established by the Company’s Board of Directors at the time of grant and will be in the range of zero to 200% of the target number of shares. The Company recognizes the related compensation expense based on the fair value of the TSR-PSUs, determined using the Monte Carlo valuation method as of the grant date, on a straight-line basis from the grant date to the end of the three-year performance period. Compensation expense will not be affected by the number of TSR-PSUs that will actually vest at the end of the three-year performance period.

In February 2021, the Company granted operating cash flow performance-based restricted stock units (“OCF-PSUs”) to certain members of the executive management team. Upon



completion of the requisite service periods, the OCF-PSUs will vest in two tranches if the Company achieves the cumulative operating cash flow performance target for fiscal years 2021 through 2023 as approved by the Company's Compensation Committee as of the date of grant. The first fifty percent of the OCF-PSU grant will vest at the end of the four-year service period from the date of grant and the remaining fifty percent of the OCF-PSU grant will vest at the

end of the five-year service period from the date of grant. The Company recognizes compensation expense ratably over the requisite service period based on the expectation that 100 percent of the OCF-PSUs are deemed probable of vesting. This probability assessment is performed quarterly and the cumulative effect of a change in the estimated compensation expense, if any, is recognized in the consolidated statement of operations in the period in which such determination is made.

The table below summarizes the activities relating to the performance-based awards issued and outstanding under the Company's Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	Shares (In thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	142	\$ 88.99
Granted	67	\$ 150.89
Performance adjustment	28	\$ 67.72
Vested	(75)	\$ 64.25
Forfeited	—	\$ —
Unvested at October 1, 2021	162	\$ 122.26
Expected to vest as of October 1, 2021	177	

The unvested PSUs are shown at target in the table above. As of October 1, 2021, the maximum number of common shares to be earned under these PSU grants was approximately 286 thousand shares.

The performance adjustment shares and vested shares shown in the table above are for performance-based awards granted on February 22, 2018. These awards vested at 160% of target number of common shares during the nine months ended October 1, 2021 based on the achievement of cumulative Non-GAAP EPS and applicable relative TSR performance conditions during the performance period of fiscal years 2018 through 2020.

The total fair value of PSUs that vested during the nine months ended October 1, 2021 was \$9.3 million based on the market price of the underlying common shares on the date of vesting.

The fair value of the TSR-PSUs at the date of grant was estimated using the Monte Carlo valuation method with the following assumptions:

	Nine Months Ended October 1, 2021
Grant-date stock price	\$ 138.23
Expected volatility	42.44%
Risk-free interest rate	0.22%
Expected annual dividend yield	—
Fair value	\$ 166.64

### ***Stock Options***

No stock options were granted during the nine months ended October 1, 2021. There were 60 thousand fully-vested stock options outstanding as of October 1, 2021.

[Income Tax Disclosure](#)

[\[Abstract\]](#)

[Income Taxes](#)

**13. Income Taxes**

The Company determines its estimated annual effective tax rate at the end of each interim period based on full-year forecasted pre-tax income and facts known at that time. The estimated annual effective tax rate is applied to the year-to-date pre-tax income at the end of each interim period with the cumulative effect of any changes in the estimated annual effective tax rate being recorded in the fiscal quarter in which the changes are determined. The tax effect of significant unusual items is reflected in the period in which they occur. Since the Company is incorporated in Canada, it is required to use Canada's statutory tax rate of 29.0% in the determination of the estimated annual effective tax rate.

The Company maintains a valuation allowance on balances of certain U.S. state net operating losses and certain non-U.S. tax attributes that the Company has determined are more likely than not to be realized. A valuation allowance is required when, based upon an assessment of various factors, including recent operating loss history, anticipated future earnings, and prudent and reasonable tax planning strategies, it is more likely than not that some portion of the deferred tax assets will not be realized. In conjunction with the Company's ongoing review of its actual results and anticipated future earnings, the Company continuously reassesses the possibility of adding a new or additional valuation allowance or releasing the valuation allowance currently in place on its deferred tax assets.

The Company's effective tax rate of (0.6%) for the three months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, and windfall tax benefits upon vesting of certain share-based compensation awards, partially offset by an increase in valuation allowances.

The Company's effective tax rate of 2.0% for the nine months ended October 1, 2021 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, a release of uncertain tax position reserves, and windfall tax benefits upon vesting of certain share-based compensation awards, partially offset by the revaluation of long term deferred tax balances resulting from the U.K. corporate tax rate change and an increase in valuation allowances during the period. For the nine months ended October 1, 2021, the windfall tax benefits upon vesting of certain share-based compensation awards had a benefit of 14.5% on the Company's effective tax rate.

The Company's effective tax rate of 17.6% for the three months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions and other tax credits.

The Company's effective tax rate of 5.2% for the nine months ended October 2, 2020 differs from the Canadian statutory tax rate of 29.0% primarily due to the mix of income earned in jurisdictions with varying tax rates, estimated deductions for Foreign Derived Intangible Income, U.K. patent box deductions, other tax credits, windfall tax benefits upon vesting of certain share-based compensation awards during the period, and a release of a portion of the valuation allowance on the deferred tax assets in Canada. For the nine months ended October 2, 2020, the windfall tax benefits upon vesting of certain share-based compensation awards and the valuation allowance release had a benefit of 7.9% and 3.3%, respectively, on the Company's effective tax rate.

## Restructuring, Acquisition, and Related Costs

9 Months Ended  
Oct. 01, 2021

### [Restructuring And Related Activities \[Abstract\]](#)

### [Restructuring, Acquisition, and Related Costs](#)

#### 14. Restructuring, Acquisition, and Related Costs

The following table summarizes restructuring, acquisition, and related costs in the accompanying consolidated statements of operations (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
2020 restructuring	\$ 5,185	\$ 1,006	\$ 7,688	\$ 1,006
2019 restructuring	—	68	208	667
2018 restructuring	—	—	—	754
Total restructuring charges	\$ 5,185	\$ 1,074	\$ 7,896	\$ 2,427
Acquisition and related charges	2,935	613	8,589	3,164
Total restructuring, acquisition, and related costs	\$ 8,120	\$ 1,687	\$ 16,485	\$ 5,591

#### 2020 Restructuring

As a result of the Company's ongoing evaluations and efforts to reduce its operating costs, while improving efficiency and effectiveness, the Company initiated the 2020 restructuring program in the third quarter of 2020. This program is focused on reducing operating complexity in the Company, including reducing infrastructure costs and streamlining the Company's operating model to better serve its customers. In addition, the program will be focused on cost reduction actions that improve gross margins for the overall company. During the three and nine months ended October 1, 2021, the Company recorded \$5.2 million and \$7.7 million, respectively, in severance and other costs in connection with the 2020 restructuring program. As of October 1, 2021, the Company

had incurred cumulative costs related to this restructuring plan totaling \$10.4 million. The Company anticipates substantially completing the 2020 restructuring program in the second quarter of 2022 and expects to incur additional restructuring charges of \$3.0 million to \$4.0 million related to the 2020 restructuring program.

The following table summarizes restructuring costs associated with the 2020 restructuring program by reportable segment (in thousands):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
Photonics	\$ 2,349	\$ —	\$ 2,839	\$ —
Vision	193	1,006	890	1,006
Precision Motion	2,643	—	3,959	—
Unallocated Corporate and Shared Services	—	—	—	—
Total	\$ 5,185	\$ 1,006	\$ 7,688	\$ 1,006

#### 2019 Restructuring

During the fourth quarter of 2018, the Company implemented a restructuring plan intended to realign operations, reduce costs, achieve operational efficiencies and focus resources on growth initiatives (the "2019 restructuring plan"). During the three and nine months ended October 1,

2021, the Company incurred zero and \$0.2 million, respectively, in severance and related costs in connection with the 2019 restructuring plan. As of October 2, 2021, the Company incurred cumulative costs related to this restructuring plan totaling \$9.0 million. The 2019 restructuring program was completed in the first quarter of 2021.

### ***Rollforward of Accrued Expenses Related to Restructuring***

The following table summarizes the accrual activities, by component, related to the Company's restructuring plans recorded in the accompanying consolidated balance sheets (in thousands):

	<b>Total</b>	<b>Severance</b>	<b>Facility</b>	<b>Other</b>
Balance at December 31, 2020	\$ 1,800	\$ 1,681	\$ 116	\$ 3
Restructuring charges	7,896	6,292	1,183	421
Cash payments	(2,333)	(1,837)	(215)	(281)
Non-cash charges and other adjustments <sup>(1)</sup>	(3,486)	(2,981)	(505)	—
Balance at October 1, 2021	<u>\$ 3,877</u>	<u>\$ 3,155</u>	<u>\$ 579</u>	<u>\$ 143</u>

(1) Non-cash charges included stock compensation charges amounting to \$3.0 million associated with severance agreements for certain employees.

### ***Acquisition and Related Charges***

Acquisition costs in connection with business combinations, including finders' fees, legal, valuation, and other professional or consulting fees, totaled \$2.9 million and \$4.7 million for the three and nine months ended October 1, 2021, respectively, and less than \$0.1 million and \$0.1 million for the three and nine months ended October 2, 2020, respectively. The Company incurred \$0.1 million and \$1.9 million for the three and nine months ended October 1, 2021, respectively, and \$0.4 million and \$1.0 million for the three and nine months ended October 2, 2020, respectively, in legal costs related to a dispute involving a company that was acquired in 2019. Acquisition and related costs recognized under earn-out agreements in connection with acquisitions totaled less than (\$0.1) million and \$1.9 million for the three and nine months ended October 1, 2021, respectively, and \$0.2 million and \$2.0 million for the three and nine months ended October 2, 2020, respectively. The majority of acquisition and related costs for the three months ended October 1, 2021 were included in the Company's Unallocated Corporate and Shared Services reportable segment. The majority of acquisition and related costs for the nine months ended October 1, 2021 were included in the Company's Precision Motion, Vision and Unallocated Corporate and Shared Services reportable segments. The majority of acquisition and related costs for the three and nine months ended October 2, 2020 were included in the Company's Precision Motion and Vision reportable segments.

## 15. Commitments and Contingencies

### *Purchase Commitments*

Excluding ATI's purchase commitments, there have been no material changes to the Company's purchase commitments since December 31, 2020. As of October 1, 2021, ATI had noncancellable commitments of \$17.9 million, primarily related to inventory purchases. The majority of these purchase commitments are expected to be incurred within the next twelve months.

### *Legal Contingencies*

In April 2020, the Company received notification of an arbitration demand filed with the American Arbitration Association against a business acquired by the Company in June 2019. The arbitration demand was filed by a contract counterparty to a joint product development agreement entered into by the business before Novanta acquired it. The arbitration demand alleged breach of contract and other claims arising out of allegations that the business failed to engage in required marketing activities for the product developed under the joint product development agreement. The claimant sought compensatory and punitive damages, lost profits and other relief. During the second quarter of 2021, the arbitrator formally closed the arbitration pursuant to a settlement between the parties. No financial damages payments were made by the Company.

The Company is subject to various legal proceedings and claims that arise in the ordinary course of business. The Company reviews the status of each significant matter and assesses the potential financial exposure on a quarterly basis. If the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated, the Company accrues a liability for the estimated loss. Significant judgment is required in both the determination of probability and the determination as to whether an exposure is reasonably estimable. Because of uncertainties related to these matters, accruals are based only on the best information available as of the date of the consolidated balance sheet. As additional information becomes available, the Company reassesses the potential liability related to any pending claims and litigations and may revise its estimates. When a material loss contingency is reasonably possible but not probable, the Company does not record a liability, but instead discloses the nature and the amount of the claim, and an estimate of the potential loss or a range of potential losses, if such an estimate can be made. Legal fees are expensed as incurred. The Company does not believe that the outcome of these claims will have a material adverse effect on its consolidated financial statements but there can be no assurance that any such claims, or any similar claims, would not have a material adverse effect on the consolidated financial statements.

### *Guarantees and Indemnifications*

In the normal course of its operations, the Company executes agreements that provide for indemnification and guarantees to counterparties in transactions such as business dispositions, sale of assets, sale of products and operating leases. Additionally, the by-laws of the Company require it to indemnify certain current or former directors, officers, and employees of the Company against expenses incurred by them in connection with each proceeding in which they are involved as a result of serving or having served in certain capacities. Indemnification is not available with respect to a proceeding as to which it has been adjudicated that the person did not act in good faith in the reasonable belief that the action was in the best interests of the Company. Certain of the Company's officers and directors are also a party to indemnification agreements with the Company. These indemnification agreements provide, among other things, that the

director and officer shall be indemnified to the fullest extent permitted by applicable law against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such officer or director in connection with any proceeding by reason of his or her relationship with the Company. In addition, the indemnification agreements provide for the advancement of expenses incurred by such director or officer in connection with any proceeding covered by the indemnification agreement, subject to the conditions set forth therein and to the extent such advancement is not prohibited by law. The indemnification agreements also set out the procedures for determining entitlement to indemnification, the requirements relating to notice and defense of claims for which indemnification is sought, the procedures for enforcement of indemnification rights, the limitations on and exclusions from indemnification, and the minimum levels of directors' and officers' liability insurance to be maintained by the Company.

## Segment Information

**9 Months Ended  
Oct. 01, 2021**

[Segment Reporting](#)

[\[Abstract\]](#)

[Segment Information](#)

### 16. Segment Information

#### *Reportable Segments*

The Company's Chief Operating Decision Maker ("CODM") utilizes financial information to make decisions about allocating resources and assessing performance for the entire Company. The Company evaluates the performance of and allocates resources to

its segments based on revenue, gross profit and operating profit. The Company's reportable segments have been identified based on commonality and adjacency of technologies, applications and customers amongst the Company's individual product lines. The Company determined that disclosing revenue by specific product was impracticable due to the highly customized and extensive portfolio of technologies offered to customers.

Based upon the information provided to the CODM, the Company has determined that it operates in three reportable segments: Photonics, Vision, and Precision Motion. The reportable segments and their principal activities consist of the following:

#### *Photonics*

The Photonics segment designs, manufactures and markets photonics-based solutions, including laser scanning, laser beam delivery, CO2 laser, solid state laser, ultrafast laser, and optical light engine products to customers worldwide. The segment serves highly demanding photonics-based applications for advanced industrial processes, metrology, medical and life science imaging, DNA sequencing, and medical laser procedures. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

#### *Vision*

The Vision segment designs, manufactures and markets a range of medical grade technologies, including medical insufflators, pumps and related disposables; visualization solutions; wireless, recorder and video integration technologies for operating room integrations; optical data collection and machine vision technologies; radio frequency identification ("RFID") technologies; thermal chart recorders; spectrometry technologies; and embedded touch screen solutions. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

#### *Precision Motion*

The Precision Motion segment designs, manufactures and markets optical and inductive encoders, precision motor and motion control sub-assemblies, servo drives, intelligent robotic end-of-arm technology solutions, air bearings, and air bearing spindles to customers worldwide. The vast majority of the segment's product offerings are sold to OEM customers. The segment sells these products both directly, utilizing a highly technical sales force, and indirectly, through resellers and distributors.

#### *Reportable Segment Financial Information*

Revenue, gross profit, gross profit margin, operating income (loss), and depreciation and amortization expenses by reportable segment were as follows (in thousands, except percentage data):

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Revenue</b>				
Photonics	\$ 55,263	\$ 46,394	\$ 176,113	\$ 149,337
Vision	65,346	64,299	196,429	198,047
Precision Motion	57,117	32,236	135,291	95,741
<b>Total</b>	<b>\$ 177,726</b>	<b>\$ 142,929</b>	<b>\$ 507,833</b>	<b>\$ 443,125</b>
	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Gross Profit</b>				
Photonics	\$ 25,311	\$ 20,166	\$ 83,014	\$ 65,725
Vision	24,763	24,586	76,132	75,676
Precision Motion	27,743	15,011	64,694	42,753
Unallocated Corporate and Shared Services	(1,519)	(658)	(6,396)	(1,902)
<b>Total</b>	<b>\$ 76,298</b>	<b>\$ 59,105</b>	<b>\$ 217,444</b>	<b>\$ 182,252</b>

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Gross Profit Margin</b>				
Photonics	45.8%	43.5%	47.1%	44.0%
Vision	37.9%	38.2%	38.8%	38.2%
Precision Motion	48.6%	46.6%	47.8%	44.7%
<b>Total</b>	<b>42.9%</b>	<b>41.4%</b>	<b>42.8%</b>	<b>41.1%</b>

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Operating Income (Loss)</b>				
Photonics	\$ 9,294	\$ 7,026	\$ 35,885	\$ 22,878
Vision	5,606	3,799	12,178	14,098
Precision Motion	14,957	7,675	34,681	20,728
Unallocated Corporate and Shared Services	(14,582)	(6,634)	(40,378)	(18,887)
<b>Total</b>	<b>\$ 15,275</b>	<b>\$ 11,866</b>	<b>\$ 42,366</b>	<b>\$ 38,817</b>

	Three Months Ended		Nine Months Ended	
	October 1, 2021	October 2, 2020	October 1, 2021	October 2, 2020
<b>Depreciation and Amortization Expenses</b>				
Photonics	\$ 2,901	\$ 2,864	\$ 8,703	\$ 8,303
Vision	5,239	5,296	15,793	15,845
Precision Motion	2,691	1,369	5,916	4,055
Unallocated Corporate and Shared Services	59	67	201	160
<b>Total</b>	<b>\$ 10,890</b>	<b>\$ 9,596</b>	<b>\$ 30,613</b>	<b>\$ 28,363</b>

### Revenue by Geography



The Company aggregates geographic revenue based on the customer locations where products are shipped to. Revenue by geography was as follows (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
United States	\$ 72,972	\$ 57,635	\$191,699	\$171,364
Germany	25,313	18,885	71,448	64,266
Rest of Europe	34,163	30,483	105,338	94,281
China	22,230	17,409	68,286	50,285
Rest of Asia-Pacific	21,256	16,414	64,765	55,956
Other	1,792	2,103	6,297	6,973
<b>Total</b>	<b>\$177,726</b>	<b>\$142,929</b>	<b>\$507,833</b>	<b>\$443,125</b>

The majority of revenue from our Photonics, Vision and Precision Motion segments is generated from sales to customers within the United States and Europe. Each segment also generates revenue across the other geographies, with no significant concentration of any segment's remaining revenue.

#### ***Revenue by End Market***

The Company primarily operates in two end markets: the medical market and advanced industrial market. Revenue by end market was approximately as follows:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Medical	53%	54%	53%	56%
Advanced Industrial	47%	46%	47%	44%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The majority of revenue from the Photonics and Precision Motion segments is generated from sales to customers in the advanced industrial market. The majority of revenue from the Vision segment is generated from sales to customers in the medical market.

## Subsequent Events

**9 Months Ended  
Oct. 01, 2021**

[Subsequent Events](#)

[\[Abstract\]](#)

[Subsequent Events](#)

### **17. Subsequent Events**

On October 5, 2021, the Company entered into an amendment (the “Fourth Amendment”) to the Third Amended and Restated Credit Agreement to exercise the accordion option. The Fourth Amendment increased the revolving credit facility commitment under the Third Amended and Restated Credit Agreement by \$200.0 million, from \$495.0 million to \$695.0 million, and reset the uncommitted accordion feature to \$200.0 million for potential future expansion.

## Basis of Presentation (Policies)

**9 Months Ended  
Oct. 01, 2021**

[Accounting Policies](#)

[\[Abstract\]](#)

[Basis of Presentation](#)

### Basis of Presentation

Novanta Inc. and its subsidiaries (collectively referred to as “Novanta”, the “Company”, “we”, “us”, “our”) is a leading global supplier of core technology solutions that give medical and advanced industrial original equipment manufacturers (“OEMs”) a competitive advantage. Novanta combines deep proprietary technology expertise and competencies in photonics, vision and precision motion with a proven ability to solve complex technical challenges. This enables Novanta to engineer core components and sub-systems that deliver extreme precision and performance, tailored to the customers’ demanding applications.

The accompanying unaudited interim consolidated financial statements have been prepared by the Company in United States (“U.S.”) dollars and pursuant to the rules and regulations of the United States Securities and Exchange Commission (“SEC”), the instructions to Form 10-Q and the provisions of Regulation S-X pertaining to interim financial statements. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the U.S. have been condensed or omitted. The interim consolidated financial statements and notes included in this report should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. In the opinion of management, these interim consolidated financial statements include all adjustments and accruals of a normal and recurring nature necessary to fairly state the results of the interim periods presented. The results for interim periods are not necessarily indicative of results to be expected for the full year or for any future periods.

The Company’s unaudited interim consolidated financial statements are prepared for each quarterly period ending on the Friday closest to the end of the calendar quarter, with the exception of the fourth quarter which always ends on December 31.

[Use of Estimates](#)

### *Use of Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Estimates and assumptions are reviewed on an on-going basis and the effects of revisions are reflected in the period in which such revisions are deemed to be necessary. The Company evaluates its estimates based on historical experience, current conditions, including estimated economic implications of the COVID-19 pandemic, and various other assumptions that it believes are reasonable under the circumstances. The accounting estimates assessed included, but were not limited to, the Company’s allowance for doubtful accounts and credit losses, inventory and related reserves and the carrying value of goodwill and other long-lived assets. While there was not a material change to the consolidated financial statements related to these estimates as of and for the nine months ended October 1, 2021, the Company’s future assessment of the magnitude and duration of the COVID-19 pandemic, as well as other factors, could result in material impacts to the Company’s consolidated financial statements in future reporting periods.

[Recent Accounting  
Pronouncements](#)

### *Recent Accounting Pronouncements*

The following table provides a brief description of recent Accounting Standards Updates (“ASU”) issued by the Financial Accounting Standards Board (“FASB”):

Standard	Description	Effective Date	Effect on the Financial Statements or Other Significant Matters
In December 2019, the FASB issued ASU 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes."	ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to the general principles of Accounting Standards Codification ("ASC") 740, "Income Taxes", including: (i) the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items; (ii) the exception to the requirement to recognize a deferred tax liability for equity method investments when a foreign subsidiary becomes an equity method investment (or vice-versa); and (iii) the exception for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. ASU 2019-12 also simplifies GAAP for other areas of ASC 740 by clarifying and amending the existing guidance.	January 1, 2021. Early adoption is permitted.	The Company adopted ASU 2019-12 during the first quarter of 2021. The adoption of ASU 2019-12 did not have a material impact on the Company's consolidated financial statements.
In March 2020, the FASB issued ASU 2020-04, "Reference rate reform (Topic 848): Facilitation of the effects of reference rate reform on financial reporting."	ASU 2020-04 provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met.	Upon issuance. ASU 2020-04 is elective.	The Company does not expect the impact of ASU 2020-04 to be material to its consolidated financial statements.
In October 2021, the FASB issued ASU 2021-08, "Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers."	ASU 2021-08 requires that entities recognize and measure contract assets and liabilities acquired in a business combination in accordance with ASC 606, "Revenue from Contracts with Customers". ASU 2021-08 also applies to contract assets or liabilities from other contracts to which the provisions of ASC 606 apply. The amendments in ASU 2021-08 do not affect the accounting for other assets or liabilities that may arise from revenue contracts with	January 1, 2023. Early adoption is permitted.	The Company is evaluating the impact of the adoption of ASU 2021-08 on its consolidated financial statements.

customers in accordance with ASC 606, such as refund liabilities, or in a business combination, such as customer-related intangible assets and contract-based intangible assets.

## Revenue Recognition

The Company recognizes revenue when control of promised goods or services is transferred to customers. The transfer of control generally occurs upon shipment when title and risk of loss pass to the customer. The vast majority of the Company's revenue is generated from the sale of distinct products. Revenue is measured as the amount of consideration the Company expects to receive in exchange for such products, which is generally at contractually stated prices. Sales taxes and value added taxes collected concurrently with revenue generating activities are excluded from revenue.

### ***Performance Obligations***

Substantially all of the Company's revenue is recognized at a point in time, upon shipment, rather than over time.

At the request of its customers, the Company may perform professional services, generally for the maintenance and repair of products previously sold to those customers and for engineering services. Professional services for the maintenance and repair of products are typically short in duration, mostly less than one month, and generally involve a single distinct performance obligation. The related revenue is recognized at a point in time when control transfers to the customer upon completion of professional services. The consideration expected to be received in exchange for such services is typically the contractually stated amount. Certain engineering services are longer in duration and the related revenue is recognized over time, as the Company has a right to consideration from a customer, based on the corresponding value to the customer from the Company's performance completed to date. Engineering services aggregate to less than 3% of the Company's consolidated revenue.

The Company occasionally sells separately priced non-standard/extended warranty services or preventative maintenance plans with the sale of products. The transfer of control over the service plans is over time. The Company recognizes the related revenue ratably over the terms of the service plans. The transaction price of a contract is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are generally determined based on the prices charged to customers or using the expected cost plus a margin.

### ***Shipping & Handling Costs***

The Company accounts for shipping and handling activities that occur after the transfer of control over the related goods as fulfillment activities rather than performance obligations. The shipping and handling fees charged to customers are recognized as revenue and the related costs are recorded in cost of revenue at the time of transfer of control.

### ***Warranties***

The Company generally provides warranties for its products. The standard warranty period is typically 12 months to 24 months for the Photonics and Precision Motion segments and 12 months to 36 months for the Vision segment. The standard warranty period for product sales is accounted for under the provisions of ASC 450, "Contingencies," as the Company has the ability to ascertain the likelihood of the liability and can reasonably estimate the amount of the liability. A provision for the estimated cost related to warranty is recorded as cost of revenue at the time revenue is recognized. The Company's estimate of costs to service the warranty obligations is

based on historical experience and expectations of future conditions. To the extent that the Company's experience in warranty claims or costs associated with servicing those claims differ from the original estimates, revisions to the estimated warranty liability are recorded at that time, with an offsetting adjustment to cost of revenue.

### ***Practical Expedients and Exemptions***

The Company expenses incremental direct costs of obtaining a contract when incurred if the expected amortization period is one year or less. These costs are recorded within selling, general and administrative expenses in the consolidated statement of operations.

The Company does not adjust the promised amount of consideration for the effects of a financing component because the transfer of a promised good to a customer and the customer's payment for that good are typically one year or less. The Company does not disclose the value of the remaining performance obligation for contracts with an original expected length of one year or less.

### ***Contract Liabilities***

Contract liabilities consist of deferred revenue and advance payments from customers, including amounts that are refundable. These contract liabilities are classified as either current or long-term liabilities in the consolidated balance sheet based on the timing of when the Company expects to recognize the related revenue. As of October 1, 2021 and December 31, 2020, contract liabilities were \$9.5 million and \$6.5 million, respectively, and are included in accrued expenses and other current liabilities and other liabilities in the accompanying consolidated balance sheets. The increase in the contract liability balance during the nine months ended October 1, 2021 is primarily due to cash payments received in advance of satisfying performance obligations and acquired contract liabilities of \$2.0 million from current year acquisitions, partially offset by \$4.9 million of revenue recognized during the period that was included in the contract liability balance at December 31, 2020.

### ***Disaggregated Revenue***

See Note 16 for the Company's disaggregation of revenue by segment, geography and end market.

## **Foreign Currency Contracts**

### **Foreign Currency Contracts**

The Company addresses market risks from changes in foreign currency exchange rates through a risk management program that includes the use of derivative financial instruments to mitigate certain foreign currency transaction exposures from future settlement of non-functional currency monetary assets and liabilities as of the end of a period. The Company does not enter into derivative transactions for speculative purposes. Gains and losses on derivative financial instruments substantially offset losses and gains on the underlying hedged exposures. Furthermore, the Company manages its exposures to counterparty risks on derivative instruments by entering into contracts with a diversified group of major financial institutions and by actively monitoring outstanding positions.

## Business Combinations (Tables)

## 9 Months Ended Oct. 01, 2021

### [Summary of Unaudited Pro Forma Information](#)

The pro forma information for all periods presented below includes the effects of business combination accounting resulting from the acquisitions of ATI and SEM, including amortization of inventory fair value adjustments, amortization of intangible assets, interest expense on borrowings in connection with the acquisition, and the related tax effects, assuming that the acquisitions had been

consummated as of January 1, 2020. The pro forma financial information is presented for comparative purposes only and is not necessarily indicative of the results of operations that actually would have been achieved if the acquisitions had taken place on January 1, 2020.

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Revenue	\$ 197,715	\$ 186,919	\$ 584,051	\$ 508,906
Consolidated net income	\$ 13,995	\$ 9,908	\$ 38,188	\$ 25,551

### [Summary of Acquisition Costs](#)

Acquisition costs are included in restructuring and acquisition related costs in the consolidated statements of operations. Acquisition-related costs for ATI and SEM acquisitions are as follows (in thousands):

	<b>Three Months Ended October 1, 2021</b>	<b>Nine Months Ended October 1, 2021</b>
ATI	\$ 1,956	\$ 3,321
SEM	\$ 864	\$ 1,052

### [ATI Industrial Automation, Inc.](#)

### [Summary of Fair Values of Assets Acquired and Liabilities Assumed Purchase Price Allocation](#)

Based upon a preliminary valuation, the total purchase price for ATI was allocated as follows (in thousands):

	<b>Purchase Price Allocation</b>
Cash	\$ 10,709
Accounts receivable	12,596
Inventories	17,431
Property, plant and equipment	4,195
Intangible assets	52,400
Goodwill	143,851
Deferred tax assets	345
Other assets	11,425
Total assets acquired	252,952
Accounts payable	5,135
Deferred tax liabilities	228
Other liabilities	14,938
Total liabilities assumed	20,301
Total assets acquired, net of liabilities assumed	232,651
Less: cash acquired	10,709
Less: contingent consideration	51,900
Initial purchase price, net of cash acquired	\$ 170,042

## Fair Value of Intangible Assets

The fair value of intangible assets for ATI is comprised of the following (dollar amounts in thousands):

	Estimated Fair Value	Weighted Average Amortization Period
Developed technologies	\$ 19,800	15 years
Customer relationships	23,600	15 years
Trademarks and trade names	5,600	15 years
Backlog	3,400	1 year
Total	<u>\$ 52,400</u>	

## Schneider Electric Motion USA, Inc.

### Summary of Fair Values of Assets Acquired and Liabilities Assumed Purchase Price Allocation

Based upon a preliminary valuation, the total purchase price for SEM was allocated as follows (in thousands):

	Purchase Price Allocation
Cash	\$ 3,881
Accounts receivable	4,240
Inventories	2,499
Property, plant and equipment	452
Intangible assets	54,570
Goodwill	70,064
Other assets	776
Total assets acquired	<u>136,482</u>
Accounts payable	1,325
Deferred tax liabilities	12,387
Other liabilities	3,750
Total liabilities assumed	<u>17,462</u>
Total assets acquired, net of liabilities assumed	119,020
Less: cash acquired	3,881
Total purchase price, net of cash acquired	<u>\$ 115,139</u>

## Fair Value of Intangible Assets

The fair value of intangible assets for SEM is comprised of the following (dollar amounts in thousands):

	Estimated Fair Value	Weighted Average Amortization Period
Developed technologies	\$ 9,110	15 years
Customer relationships	41,740	20 years
Trademarks and trade names	370	4 years
Backlog	3,350	1 year
Total	<u>\$ 54,570</u>	



**Accumulated Other  
Comprehensive Loss  
(Tables)**

[Equity \[Abstract\]](#)

[Components of Accumulated Other  
Comprehensive Loss](#)

**9 Months Ended**

**Oct. 01, 2021**

Changes in accumulated other comprehensive loss was as follows (in thousands):

	<b>Total Accumulated Other Comprehensive Loss</b>	<b>Cumulative Translation Adjustments</b>	<b>Pension Liability Adjustments</b>
Balance at December 31, 2020	\$ (12,241)	\$ (2,296)	\$ (9,945)
Other comprehensive income (loss)	(3,487)	(3,602)	115
Amounts reclassified from accumulated other comprehensive loss	717	—	717
Balance at October 1, 2021	<u>\$ (15,011)</u>	<u>\$ (5,898)</u>	<u>\$ (9,113)</u>

# Earnings per Common Share (Tables)

## [Earnings Per Share \[Abstract\]](#) [Computation of Basic and Diluted](#) [Earnings per Common Share](#)

**9 Months Ended**  
**Oct. 01, 2021**

The following table sets forth the computation of basic and diluted earnings per common share (amounts in thousands, except per share data):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
<b>Numerators:</b>				
Consolidated net income	<u>\$ 13,603</u>	<u>\$ 8,258</u>	<u>\$ 36,577</u>	<u>\$ 31,865</u>
<b>Denominators:</b>				
Weighted average common shares outstanding— basic	35,447	35,142	35,366	35,144
Dilutive potential common shares	<u>317</u>	<u>546</u>	<u>405</u>	<u>465</u>
Weighted average common shares outstanding— diluted	<u>35,764</u>	<u>35,688</u>	<u>35,771</u>	<u>35,609</u>
Antidilutive potential common shares excluded from above	1	—	18	17
<b>Earnings per Common Share:</b>				
Basic	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
Diluted	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89

**Fair Value Measurements  
(Tables)**

**9 Months Ended  
Oct. 01, 2021**

[Fair Value Disclosures \[Abstract\]](#)  
[Fair Values of Assets and Liabilities](#)  
[Measured at Fair Value on Recurring](#)  
[Basis](#)

The following table summarizes the fair values of the Company's assets and liabilities measured at fair value on a recurring basis as of October 1, 2021 (in thousands):

	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash equivalents	\$ 3,089	\$ 3,089	\$ —	\$ —
Prepaid expenses and other current assets:				
Foreign currency forward contracts	202	—	202	—
	<u>\$ 3,291</u>	<u>\$ 3,089</u>	<u>\$ 202</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and other current liabilities:				
Contingent considerations				
- Current	\$ 55,469	\$ —	\$ —	\$ 55,469
Foreign currency forward contracts	10	—	10	—
Other liabilities:				
Contingent considerations				
- Long-term	3,605	—	—	3,605
	<u>\$ 59,084</u>	<u>\$ —</u>	<u>\$ 10</u>	<u>\$ 59,074</u>

The following table summarizes the fair values of the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2020 (in thousands):

	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash equivalents	\$ 11,047	\$ 11,047	\$ —	\$ —
Prepaid expenses and				

other current assets:				
Foreign currency forward contracts	27	—	27	—
	<u>\$ 11,074</u>	<u>\$ 11,047</u>	<u>\$ 27</u>	<u>\$ —</u>
<b>Liabilities</b>				
Accrued expenses and other current liabilities:				
Contingent considerations				
- Current	\$ 4,280	\$ —	\$ —	\$ 4,280
Foreign currency forward contracts	—	—	—	—
Other liabilities:				
Contingent considerations				
- Long-term	7,276	—	—	7,276
	<u>\$ 11,556</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 11,556</u>

### Changes in Fair Value of Level 3 Contingent Considerations

Changes in the fair value of Level 3 contingent considerations during the nine months ended October 1, 2021 were as follows (in thousands):

	Contingent Considerations
Balance at December 31, 2020	\$ 11,556
Acquisition of ATI	51,900
Payments	(4,036)
Fair value adjustments	26
Effect of foreign exchange rates	(372)
Balance at October 1, 2021	<u>\$ 59,074</u>

### Schedule of Fair Value Measurement Inputs and Valuation Techniques

The following table provides qualitative information associated with the fair value measurement of the Company's Level 3 liabilities:

Liability	October 1, 2021 Fair Value (in thousands)	Valuation Technique	Unobservable Inputs	Percentage Applied
Contingent consideration (ATI)	\$51,900	Monte Carlo method	Historical and projected adjusted	N/A
			EBITDA for fiscal year 2021	
			EBITDA risk premium	7.2%
			EBITDA volatility	27.0%
			Credit spread	2.1%

Contingent consideration (ARGES)	\$4,282	Monte Carlo method	Historical and projected revenues from August 2019 through December 2026	N/A
			Revenue volatility	21.0%
			Cost of debt	2.6%
			Discount rate	3.7%
Contingent consideration (Ingenia)	\$1,493	Monte Carlo method	Historical and projected revenues from April 2019 through March 2022	N/A
			Revenue volatility	38.5%
			Cost of debt	3.1%
			Discount rate	9.6%
Contingent consideration (Other)	\$1,399	Discounted cash flow method	Historical and projected revenues for fiscal years 2018 to 2021	N/A
			Revenue discount rate	22.8%

## Goodwill and Intangible Assets (Tables)

9 Months Ended  
Oct. 01, 2021

### [Goodwill And Intangible Assets Disclosure \[Abstract\] Summary of Changes in Goodwill](#)

The following table summarizes changes in goodwill during the nine months ended October 1, 2021 (in thousands):

Balance at beginning of the period	\$ 285,980
Goodwill acquired from acquisitions	213,915
Effect of foreign exchange rate changes	(6,955)
Balance at end of the period	<u>\$ 492,940</u>

### [Goodwill by Reportable Segment](#)

Goodwill by reportable segment as of October 1, 2021 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 215,453	\$ 161,885	\$ 266,831	\$ 644,169
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 112,992</u>	<u>\$ 130,163</u>	<u>\$ 249,785</u>	<u>\$ 492,940</u>

Goodwill by reportable segment as of December 31, 2020 was as follows (in thousands):

	Reportable Segment			Total
	Photonics	Vision	Precision Motion	
Goodwill	\$ 218,517	\$ 165,195	\$ 53,497	\$ 437,209
Accumulated impairment of goodwill	(102,461)	(31,722)	(17,046)	(151,229)
Total	<u>\$ 116,056</u>	<u>\$ 133,473</u>	<u>\$ 36,451</u>	<u>\$ 285,980</u>

### [Intangible Assets](#)

Intangible assets as of October 1, 2021 and December 31, 2020, respectively, are summarized as follows (in thousands):

	October 1, 2021			December 31, 2020		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortizable intangible assets:						
Patents and developed technologies \$	190,485	\$ (118,535)	\$ 71,950	\$ 164,430	\$ (110,572)	\$ 53,858
Customer relationships	229,369	(101,546)	127,823	167,429	(92,892)	74,537
Customer backlog	6,753	(563)	6,190	—	—	—
Trademarks and trade names	24,052	(12,015)	12,037	18,367	(11,268)	7,099
Amortizable intangible assets	<u>450,659</u>	<u>(232,659)</u>	<u>218,000</u>	<u>350,226</u>	<u>(214,732)</u>	<u>135,494</u>
Non-amortizable intangible assets:						

Trade names	13,027	—	13,027	13,027	—	13,027
Totals	<u>\$ 463,686</u>	<u>\$ (232,659)</u>	<u>\$ 231,027</u>	<u>\$ 363,253</u>	<u>\$ (214,732)</u>	<u>\$ 148,521</u>

### Amortization Expense of Intangible Assets

Amortization expense was as follows (in thousands):

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
Amortization expense – cost of revenue	\$ 3,316	\$ 2,820	\$ 9,275	\$ 8,270
Amortization expense – operating expenses	4,139	3,533	11,300	10,388
Total amortization expense	<u>\$ 7,455</u>	<u>\$ 6,353</u>	<u>\$20,575</u>	<u>\$18,658</u>

### Estimated Amortization Expense

Estimated amortization expense for each of the five succeeding years and thereafter as of October 1, 2021 was as follows (in thousands):

<u>Year Ending December 31,</u>	<u>Cost of Revenue</u>	<u>Operating Expenses</u>	<u>Total</u>
2021 (remainder of year)	\$ 4,029	\$ 5,294	\$ 9,323
2022	13,854	27,032	40,886
2023	12,544	20,998	33,542
2024	10,170	17,631	27,801
2025	8,579	14,917	23,496
Thereafter	22,774	60,178	82,952
Total	<u>\$ 71,950</u>	<u>\$146,050</u>	<u>\$218,000</u>

**Supplementary Balance  
Sheet Information (Tables)**

**9 Months Ended  
Oct. 01, 2021**

**Organization Consolidation And Presentation Of Financial  
Statements [Abstract]**

**Inventories**

***Inventories***

	October 1, 2021	December 31, 2020
Raw materials	\$ 75,445	\$ 55,657
Work-in-process	21,409	15,487
Finished goods	20,781	20,234
Demo and consigned inventory	1,787	1,359
Total inventories	<u>\$ 119,422</u>	<u>\$ 92,737</u>

**Accrued Expenses and Other Current Liabilities**

***Accrued Expenses and Other Current Liabilities***

	October 1, 2021	December 31, 2020
Accrued compensation and benefits	\$ 20,546	\$ 12,510
Accrued warranty	4,527	4,919
Contract liabilities, current portion	9,190	6,173
Finance lease obligations	590	9,720
Accrued earn- out and contingent considerations	55,469	10,796
Other	14,184	9,662
Total	<u>\$104,506</u>	<u>\$ 53,780</u>

**Accrued Warranty**

***Accrued Warranty***

	Nine Months Ended October 1, 2021	October 2, 2020
Balance at beginning of the period	\$ 4,919	\$ 5,756
Provision charged to cost of revenue	1,215	1,255
Warranty liabilities acquired from acquisitions	541	—



Use of provision	(2,075)	(1,941)
Foreign currency exchange rate changes	(73)	32
Balance at end of the period	<u>\$ 4,527</u>	<u>\$ 5,102</u>

## Other Long Term Liabilities

### *Other Long Term Liabilities*

	October 1, 2021	December 31, 2020
Finance lease obligations	\$ 5,461	\$ 5,908
Accrued pension liabilities	326	1,511
Accrued contingent considerations	3,605	7,276
Other	2,352	2,471
Total	<u>\$ 11,744</u>	<u>\$ 17,166</u>

**Debt (Tables)****9 Months Ended  
Oct. 01, 2021****[Debt Disclosure \[Abstract\]](#)****[Debt](#)**

Debt consisted of the following (in thousands):

	October 1, 2021	December 31, 2020
Senior Credit Facilities – term loan	\$ 5,238	\$ 5,545
Less: unamortized debt issuance costs	(31)	(37)
Total current portion of long- term debt	\$ 5,207	\$ 5,508
Senior Credit Facilities – term loan	\$ 90,092	\$ 99,534
Senior Credit Facilities – revolving credit facility	355,288	99,761
Less: unamortized debt issuance costs	(3,549)	(4,368)
Total long-term debt	\$441,831	\$194,927
Total Senior Credit Facilities	\$447,038	\$200,435

## Leases (Tables)

## 9 Months Ended Oct. 01, 2021

### [Leases \[Abstract\]](#)

### [Summary of Components of Lease Costs](#)

The following table summarizes the components of lease costs (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Operating lease cost	\$ 2,418	\$ 1,786	\$ 6,213	\$ 5,693
Finance lease cost				
Amortization of right-of-use assets	149	253	451	748
Interest on lease liabilities	85	108	257	326
Variable lease cost	275	320	834	1,043
Total lease cost	<u>\$ 2,927</u>	<u>\$ 2,467</u>	<u>\$ 7,755</u>	<u>\$ 7,810</u>

### [Summary of Balance Sheet Information Related to Leases](#)

The following table provides additional details of balance sheet information related to the Company's leases (in thousands, except lease term and discount rate):

	<b>October 1, 2021</b>	<b>December 31, 2020</b>
<b>Operating leases</b>		
Operating lease right-of-use assets	<u>\$ 43,459</u>	<u>\$ 34,444</u>
Current portion of operating lease liabilities	\$ 7,575	\$ 6,188
Operating lease liabilities	40,850	32,802
Total operating lease liabilities	<u>\$ 48,425</u>	<u>\$ 38,990</u>
<b>Finance leases</b>		
Property, plant and equipment, gross	\$ 9,582	\$ 19,819
Accumulated depreciation	(4,918)	(4,934)
Finance lease assets included in property, plant and equipment, net	<u>\$ 4,664</u>	<u>\$ 14,885</u>
Accrued expenses and other current liabilities	\$ 590	\$ 9,720
Other liabilities	5,461	5,908
Total finance lease liabilities	<u>\$ 6,051</u>	<u>\$ 15,628</u>
<b>Weighted-average remaining lease term (in years):</b>		
Operating leases	8.4	9.3
Finance leases	7.8	3.5
<b>Weighted-average discount rate:</b>		
Operating leases	4.96%	5.50%
Finance leases	5.54%	3.00%

[Summary of Cash Flow  
Information Related to Leases](#)

The following table provides additional details of cash flow information related to the Company's leases (in thousands):

	Nine Months Ended	
	October 1, 2021	October 2, 2020
<b>Cash paid for amounts included in lease liabilities:</b>		
Operating cash flows from finance leases	\$ 257	\$ 357
Operating cash flows from operating leases	\$ 5,562	\$ 5,088
Financing cash flows from finance leases	\$ 9,166	\$ 1,034
<b>Supplemental non-cash information:</b>		
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 15,340	\$ 3,050

[Future Minimum Lease  
Payments Under Operating  
and Finance Leases](#)

Future minimum lease payments under operating and finance leases expiring subsequent to October 1, 2021, including operating leases associated with facilities that have been vacated as a result of the Company's restructuring actions, are summarized as follows (in thousands):

Year Ending December 31,	Operating Leases	Finance Leases
2021 (remainder of year)	\$ 2,141	\$ 227
2022	9,539	907
2023	8,241	930
2024	7,230	954
2025	6,967	954
Thereafter	27,090	3,486
Total minimum lease payments	61,208	7,458
Less: Interest	(12,783)	(1,407)
Present value of lease liabilities	<u>\$ 48,425</u>	<u>\$ 6,051</u>

**Preferred and Common  
Shares and Share-Based  
Compensation (Tables)**

**9 Months Ended  
Oct. 01, 2021**

**Share Based Compensation  
Arrangement By Share Based  
Payment Award [Line Items]  
Share-Based Compensation Expense  
Recorded in the Consolidated  
Statements of Operations**

The table below summarizes share-based compensation expense recorded in the consolidated statements of operations (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Selling, general and administrative	\$ 4,360	\$ 4,265	\$ 13,123	\$ 10,225
Research and development and engineering	534	1,150	1,776	2,204
Cost of revenue	631	1,589	2,305	3,185
Restructuring, acquisition, and related costs	2,965	221	2,965	458
Total share-based compensation expense	<u>\$ 8,490</u>	<u>\$ 7,225</u>	<u>\$ 20,169</u>	<u>\$ 16,072</u>

**Schedule of Share Based Payment  
Award Performance Stock Awards  
Valuation Assumptions**

The fair value of the TSR-PSUs at the date of grant was estimated using the Monte Carlo valuation method with the following assumptions:

	<b>Nine Months Ended October 1, 2021</b>
Grant-date stock price	\$ 138.23
Expected volatility	42.44%
Risk-free interest rate	0.22%
Expected annual dividend yield	—
Fair value	\$ 166.64

**Amended and Restated 2010  
Incentive Plan  
Share Based Compensation  
Arrangement By Share Based  
Payment Award [Line Items]  
Restricted Stock Units and Deferred  
Stock Units Issued and Outstanding**

The table below summarizes activities relating to RSUs and DSUs issued and outstanding under the Company's Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	<b>Shares (In thousands)</b>	<b>Weighted Average Grant Date Fair Value</b>
Unvested at December 31, 2020	625	\$ 58.79
Granted	169	\$ 136.85
Vested	(485)	\$ 51.21
Forfeited	(20)	\$ 103.20
Unvested at October 1, 2021	<u>289</u>	<u>\$ 113.94</u>
Expected to vest as of October 1, 2021	<u>272</u>	

Performance-Based Awards Issued  
and Outstanding

The table below summarizes the activities relating to the performance-based awards issued and outstanding under the Company's Amended and Restated 2010 Incentive Plan during the nine months ended October 1, 2021:

	Shares (In thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	142	\$ 88.99
Granted	67	\$ 150.89
Performance adjustment	28	\$ 67.72
Vested	(75)	\$ 64.25
Forfeited	—	\$ —
Unvested at October 1, 2021	162	\$ 122.26
Expected to vest as of October 1, 2021	177	

## Restructuring, Acquisition, and Related Costs (Tables)

**9 Months Ended  
Oct. 01, 2021**

### [Restructuring And Related Activities \[Abstract\]](#)

### [Schedule of Restructuring, Acquisition and Related Costs](#)

The following table summarizes restructuring, acquisition, and related costs in the accompanying consolidated statements of operations (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
2020 restructuring	\$ 5,185	\$ 1,006	\$ 7,688	\$ 1,006
2019 restructuring	—	68	208	667
2018 restructuring	—	—	—	754
Total restructuring charges	\$ 5,185	\$ 1,074	\$ 7,896	\$ 2,427
Acquisition and related charges	2,935	613	8,589	3,164
Total restructuring, acquisition, and related costs	<u>\$ 8,120</u>	<u>\$ 1,687</u>	<u>\$ 16,485</u>	<u>\$ 5,591</u>

### [Summary of Restructuring Charges by Reportable Segment](#)

The following table summarizes restructuring costs associated with the 2020 restructuring program by reportable segment (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Photonics	\$ 2,349	\$ —	\$ 2,839	\$ —
Vision	193	1,006	890	1,006
Precision Motion	2,643	—	3,959	—
Unallocated Corporate and Shared Services	—	—	—	—
Total	<u>\$ 5,185</u>	<u>\$ 1,006</u>	<u>\$ 7,688</u>	<u>\$ 1,006</u>

### [Summary of Accrual Activities by Components Related to Company's Restructuring Plans](#)

The following table summarizes the accrual activities, by component, related to the Company's restructuring plans recorded in the accompanying consolidated balance sheets (in thousands):

	<b>Total</b>	<b>Severance</b>	<b>Facility</b>	<b>Other</b>
Balance at December 31, 2020	\$ 1,800	\$ 1,681	\$ 116	\$ 3
Restructuring charges	7,896	6,292	1,183	421
Cash payments	(2,333)	(1,837)	(215)	(281)
Non-cash charges and other adjustments (1)	(3,486)	(2,981)	(505)	—
Balance at October 1, 2021	<u>\$ 3,877</u>	<u>\$ 3,155</u>	<u>\$ 579</u>	<u>\$ 143</u>

(1) Non-cash charges included stock compensation charges amounting to \$3.0 million associated with severance agreements for certain employees.

**Segment Information  
(Tables)**

**Segment Reporting [Abstract]**

**Revenue, Gross Profit, Gross Profit Margin,  
Operating Income (Loss), and Depreciation and  
Amortization Expenses by Reportable Segment**

**9 Months Ended  
Oct. 01, 2021**

Revenue, gross profit, gross profit margin, operating income (loss), and depreciation and amortization expenses by reportable segment were as follows (in thousands, except percentage data):

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
<b>Revenue</b>				
Photronics	\$ 55,263	\$ 46,394	\$176,113	\$149,337
Vision	65,346	64,299	196,429	198,047
Precision Motion	57,117	32,236	135,291	95,741
<b>Total</b>	<b>\$177,726</b>	<b>\$142,929</b>	<b>\$507,833</b>	<b>\$443,125</b>
	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
<b>Gross Profit</b>				
Photronics	\$25,311	\$20,166	\$ 83,014	\$ 65,725
Vision	24,763	24,586	76,132	75,676
Precision Motion	27,743	15,011	64,694	42,753
Unallocated Corporate and Shared Services	(1,519)	(658)	(6,396)	(1,902)
<b>Total</b>	<b>\$76,298</b>	<b>\$59,105</b>	<b>\$217,444</b>	<b>\$182,252</b>

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
<b>Gross Profit Margin</b>				
Photronics	45.8%	43.5%	47.1%	44.0%
Vision	37.9%	38.2%	38.8%	38.2%
Precision Motion	48.6%	46.6%	47.8%	44.7%
<b>Total</b>	<b>42.9%</b>	<b>41.4%</b>	<b>42.8%</b>	<b>41.1%</b>

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>
<b>Operating Income (Loss)</b>				
Photronics	\$ 9,294	\$ 7,026	\$ 35,885	\$ 22,878
Vision	5,606	3,799	12,178	14,098
Precision Motion	14,957	7,675	34,681	20,728
Unallocated Corporate and Shared Services	(14,582)	(6,634)	(40,378)	(18,887)
<b>Total</b>	<b>\$ 15,275</b>	<b>\$11,866</b>	<b>\$ 42,366</b>	<b>\$ 38,817</b>

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 1, 2021</u>	<u>October 2, 2020</u>	<u>October 1, 2021</u>	<u>October 2, 2020</u>



<b>Depreciation and Amortization Expenses</b>	<b>2021</b>	<b>2020</b>	<b>2021</b>	<b>2020</b>
Photonics	\$ 2,901	\$ 2,864	\$ 8,703	\$ 8,303
Vision	5,239	5,296	15,793	15,845
Precision Motion	2,691	1,369	5,916	4,055
Unallocated				
Corporate and Shared Services	59	67	201	160
<b>Total</b>	<b>\$ 10,890</b>	<b>\$ 9,596</b>	<b>\$ 30,613</b>	<b>\$ 28,363</b>

### Schedule of Geographic Revenue

The Company aggregates geographic revenue based on the customer locations where products are shipped to. Revenue by geography was as follows (in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
United States	\$ 72,972	\$ 57,635	\$ 191,699	\$ 171,364
Germany	25,313	18,885	71,448	64,266
Rest of Europe	34,163	30,483	105,338	94,281
China	22,230	17,409	68,286	50,285
Rest of Asia-Pacific	21,256	16,414	64,765	55,956
Other	1,792	2,103	6,297	6,973
<b>Total</b>	<b>\$ 177,726</b>	<b>\$ 142,929</b>	<b>\$ 507,833</b>	<b>\$ 443,125</b>

### Revenue By End Market

The Company primarily operates in two end markets: the medical market and advanced industrial market. Revenue by end market was approximately as follows:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 1, 2021</b>	<b>October 2, 2020</b>	<b>October 1, 2021</b>	<b>October 2, 2020</b>
Medical	53%	54%	53%	56%
Advanced Industrial	47%	46%	47%	44%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Revenue - Additional Information (Details) - USD (\$) \$ in Millions	9 Months Ended  Oct. 01, 2021	12 Months Ended Dec. 31, 2020
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[Revenue \[Line Items\]](#)

[Incremental direct costs of  
obtaining a contract, practical  
expedient](#) true

[Effects of a financing  
component, practical  
expedient](#) true

[Remaining performance  
obligation for contracts,  
optional exemption](#) true

[Adoption of Topic 606](#)

[Revenue \[Line Items\]](#)

<a href="#">Contract liabilities</a>	\$ 9.5	\$ 6.5
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<a href="#">Revenue recognized</a>	\$ 2.0	\$ 4.9
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[Warranties](#)

[Revenue \[Line Items\]](#)

[Standard product warranty  
description](#) The Company generally provides warranties for its products. The standard warranty period is typically 12 months to 24 months for the Photonics and Precision Motion segments and 12 months to 36 months for the Vision segment. The standard warranty period for product sales is accounted for under the provisions of ASC 450, "Contingencies," as the Company has the ability to ascertain the likelihood of the liability and can reasonably estimate the amount of the liability.

[Minimum | Photonics and  
Precision Motion | Warranties](#)

[Revenue \[Line Items\]](#)

[Standard warranty period on  
products](#) 12 months

[Minimum | Vision | Warranties](#)

[Revenue \[Line Items\]](#)

[Standard warranty period on  
products](#) 12 months

[Maximum | Photonics and  
Precision Motion | Warranties](#)

[Revenue \[Line Items\]](#)

[Standard warranty period on  
products](#) 24 months

[Maximum | Vision | Warranties](#)

[Revenue \[Line Items\]](#)

Standard warranty period on products 36 months

Maximum | Maintenance and Repair of Products

**Revenue [Line Items]**

Percentage of revenue for professional services 3.00%

Duration of engineering services performed under customer contract 1 month

Business Combinations - Additional Information (Details) - USD (\$) \$ in Thousands	1 Months Ended		9 Months Ended			
	Aug. 31, 2021	Aug. 30, 2021	Oct. 01, 2021	Oct. 01, 2021	Dec. 31, 2020	
<a href="#">Business Acquisition [Line Items]</a>						
<a href="#">Goodwill</a>			\$ 492,940	\$ 492,940	\$ 492,940	\$ 285,980
<a href="#">ATI Industrial Automation, Inc.</a>						
<a href="#">Business Acquisition [Line Items]</a>						
<a href="#">Business acquisition, date of acquisition</a>		Aug. 30, 2021				
<a href="#">Percentage of shares acquired</a>		100.00%				
<a href="#">Initial cash purchase price, net of cash acquired</a>		\$ 170,042				
<a href="#">Fair value of contingent consideration</a>		51,900				
<a href="#">Intangible assets</a>		52,400				
<a href="#">Goodwill</a>		143,851				
<a href="#">Goodwill assets expected to be deductible for income tax purposes</a>		\$ 143,400				
<a href="#">Revenues</a>					8,700	
<a href="#">Income (loss) before income taxes</a>					800	
<a href="#">Amortization of inventory fair value adjustments and purchased intangible assets</a>				\$ 800		
<a href="#">Schneider Electric Motion USA, Inc.</a>						
<a href="#">Business Acquisition [Line Items]</a>						
<a href="#">Business acquisition, date of acquisition</a>		Aug. 31, 2021				
<a href="#">Percentage of shares acquired</a>		100.00%				
<a href="#">Purchase price</a>		\$ 115,139				
<a href="#">Intangible assets</a>		54,570				
<a href="#">Goodwill</a>		\$ 70,064				
<a href="#">Revenues</a>					2,400	
<a href="#">Income (loss) before income taxes</a>					\$ 100	
<a href="#">Amortization of inventory fair value adjustments and purchased intangible assets</a>				\$ 500		

**Summary of Fair Values of  
Assets Acquired and  
Liabilities Assumed  
Purchase Price Allocation  
(Details) - USD (\$)  
\$ in Thousands**

**Aug. 31, 2021 Aug. 30, 2021 Oct. 01, 2021 Dec. 31, 2020**

**Business Acquisition [Line Items]**

Goodwill \$ 492,940 \$ 285,980

ATI Industrial Automation, Inc.

**Business Acquisition [Line Items]**

Cash \$ 10,709

Accounts receivable 12,596

Inventories 17,431

Property, plant and equipment 4,195

Intangible assets 52,400

Goodwill 143,851

Deferred tax assets 345

Other assets 11,425

Total assets acquired 252,952

Accounts payable 5,135

Deferred tax liabilities 228

Other liabilities 14,938

Total liabilities assumed 20,301

Total assets acquired, net of liabilities assumed 232,651

Less: cash acquired 10,709

Less: contingent consideration 51,900

Initial purchase price, net of cash acquired \$ 170,042

Schneider Electric Motion USA, Inc.

**Business Acquisition [Line Items]**

Cash \$ 3,881

Accounts receivable 4,240

Inventories 2,499

Property, plant and equipment 452

Intangible assets 54,570

Goodwill 70,064

Other assets 776

Total assets acquired 136,482

Accounts payable 1,325

Deferred tax liabilities 12,387

Other liabilities 3,750

Total liabilities assumed 17,462

Total assets acquired, net of liabilities assumed 119,020

Less: cash acquired 3,881

Total purchase price, net of cash acquired \$ 115,139

**Fair Value of Intangible  
Assets (Details) - USD (\$)  
\$ in Thousands**

**Aug. 31, 2021 Aug. 30, 2021**

[ATI Industrial Automation, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 52,400

[Schneider Electric Motion USA, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 54,570

[Developed Technologies | ATI Industrial Automation, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 19,800

[Intangible Assets Weighted Average Amortization Period](#) 15 years

[Developed Technologies | Schneider Electric Motion USA, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 9,110

[Intangible Assets Weighted Average Amortization Period](#) 15 years

[Customer Relationships | ATI Industrial Automation, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 23,600

[Intangible Assets Weighted Average Amortization Period](#) 15 years

[Customer Relationships | Schneider Electric Motion USA, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 41,740

[Intangible Assets Weighted Average Amortization Period](#) 20 years

[Trademarks and Trade Names | ATI Industrial Automation, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 5,600

[Intangible Assets Weighted Average Amortization Period](#) 15 years

[Trademarks and Trade Names | Schneider Electric Motion USA, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 370

[Intangible Assets Weighted Average Amortization Period](#) 4 years

[Backlog | ATI Industrial Automation, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 3,400

[Intangible Assets Weighted Average Amortization Period](#) 1 year

[Backlog | Schneider Electric Motion USA, Inc.](#)

**[Acquired Finite Lived Intangible Assets \[Line Items\]](#)**

[Intangible Assets Estimated Fair Value](#) \$ 3,350

[Intangible Assets Weighted Average Amortization Period](#) 1 year

Summary of Unaudited Pro Forma Information (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<a href="#">Business Combinations [Abstract]</a>				
<a href="#">Revenue</a>	\$ 197,715	\$ 186,919	\$ 584,051	\$ 508,906
<a href="#">Consolidated net income</a>	\$ 13,995	\$ 9,908	\$ 38,188	\$ 25,551

Summary of Acquisition Costs (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Business Acquisition [Line Items]</u></b>				
<u>Acquisition costs</u>	\$ 2,935	\$ 613	\$ 8,589	\$ 3,164
<u>ATI Industrial Automation, Inc.</u>				
<b><u>Business Acquisition [Line Items]</u></b>				
<u>Acquisition costs</u>	1,956		3,321	
<u>Schneider Electric Motion USA, Inc.</u>				
<b><u>Business Acquisition [Line Items]</u></b>				
<u>Acquisition costs</u>	\$ 864		\$ 1,052	



**Accumulated Other  
Comprehensive Loss  
(Details)  
\$ in Thousands**

**9 Months Ended  
Oct. 01, 2021  
USD (\$)**

**Accumulated Other Comprehensive Income Loss [Line Items]**

<u>Beginning Balance</u>	\$ 476,809
<u>Other comprehensive income (loss)</u>	(3,487)
<u>Amounts reclassified from accumulated other comprehensive loss</u>	717
<u>Ending Balance</u>	500,113
<u>Total Accumulated Other Comprehensive Loss</u>	

**Accumulated Other Comprehensive Income Loss [Line Items]**

<u>Beginning Balance</u>	(12,241)
<u>Ending Balance</u>	(15,011)
<u>Cumulative Translation Adjustments</u>	

**Accumulated Other Comprehensive Income Loss [Line Items]**

<u>Beginning Balance</u>	(2,296)
<u>Other comprehensive income (loss)</u>	(3,602)
<u>Ending Balance</u>	(5,898)
<u>Pension Liability Adjustments</u>	

**Accumulated Other Comprehensive Income Loss [Line Items]**

<u>Beginning Balance</u>	(9,945)
<u>Other comprehensive income (loss)</u>	115
<u>Amounts reclassified from accumulated other comprehensive loss</u>	717
<u>Ending Balance</u>	\$ (9,113)

Computation of Basic and Diluted Earnings per Common Share (Details) - USD (\$) \$ / shares in Units, shares in Thousands, \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Numerators:</u></b>				
<u>Consolidated net income</u>	\$ 13,603	\$ 8,258	\$ 36,577	\$ 31,865
<b><u>Denominators:</u></b>				
<u>Weighted average common shares outstanding—basic</u>	35,447	35,142	35,366	35,144
<u>Dilutive potential common shares</u>	317	546	405	465
<u>Weighted average common shares outstanding— diluted</u>	35,764	35,688	35,771	35,609
<u>Antidilutive potential common shares excluded from above</u>	1		18	17
<b><u>Earnings per Common Share:</u></b>				
<u>Basic</u>	\$ 0.38	\$ 0.23	\$ 1.03	\$ 0.91
<u>Diluted</u>	\$ 0.38	\$ 0.23	\$ 1.02	\$ 0.89

Earnings per Common Share - Additional Information (Details) - shares shares in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<a href="#">EPS Performance-based Restricted Stock Units</a>				
<a href="#">Computation Of Earnings Per Share [Line Items]</a>				
<a href="#">Contingently issuable shares excluded from calculation of weighted average common shares outstanding</a>	45	73	45	73
<a href="#">Operating Cash Flow Performance Based Restricted Stock Units</a>				
<a href="#">Computation Of Earnings Per Share [Line Items]</a>				
<a href="#">Contingently issuable shares excluded from calculation of weighted average common shares outstanding</a>	37		37	
<a href="#">Laser Quantum   Restricted Stock</a>				
<a href="#">Computation Of Earnings Per Share [Line Items]</a>				
<a href="#">Contingently issuable shares excluded from calculation of weighted average common shares outstanding</a>	213	213	213	213

Fair Value Measurements - Business Combination Contingent Consideration - Additional Information (Details)	1 Months Ended					3 Months Ended		9 Months Ended												
	Aug. 30, 2021 USD (\$)	May 31, 2021 USD (\$)	May 31, 2021 EUR (€)	May 31, 2020 USD (\$)	May 31, 2020 EUR (€)	Oct. 01, 2021 USD (\$)	Jul. 02, 2021 USD (\$)	Oct. 01, 2021 USD (\$)	Oct. 01, 2021 EUR (€)	Oct. 02, 2020 USD (\$) Installment	Oct. 01, 2021 EUR (€)	Apr. 02, 2021 USD (\$)	Apr. 02, 2021 EUR (€)	Dec. 31, 2020 USD (\$)	Dec. 31, 2020 EUR (€)	Jul. 31, 2019 USD (\$)	Jul. 31, 2019 EUR (€)	Apr. 16, 2019 USD (\$)	Apr. 16, 2019 EUR (€)	
<a href="#">Business Acquisition [Line Items]</a>																				
<a href="#">Payment for contingent consideration</a>								\$ 1,836,000		\$ 1,135,000										
<a href="#">ATI Industrial Automation, Inc.</a>																				
<a href="#">Business Acquisition [Line Items]</a>																				
<a href="#">Fair value of contingent consideration</a>	\$ 51,900,000																			
<a href="#">Changes in fair value of contingent consideration</a>	\$ 0																			
<a href="#">ARGES GmbH</a>																				
<a href="#">Business Acquisition [Line Items]</a>																				
<a href="#">Fair value of contingent consideration</a>						\$ 4,300,000	4,300,000			€ 3,700,000				\$ 5,100,000	€ 4,100,000	\$ 7,900,000	€ 7,100,000			
<a href="#">Changes in fair value of contingent consideration</a>						\$ 0	0													
<a href="#">Undiscounted low range of contingent consideration   €</a>																0				
<a href="#">Undiscounted high range of contingent consideration</a>																\$ 11,100,000	€ 10,000,000.0			
<a href="#">Payment for contingent consideration</a>							400,000	€ 400,000												
<a href="#">Ingenia-CAT, S.L.</a>																				
<a href="#">Business Acquisition [Line Items]</a>																				
<a href="#">Fair value of contingent consideration</a>												\$ 2,900,000	€ 2,400,000	\$ 2,900,000	€ 2,300,000			\$ 6,600,000	€ 5,800,000	
<a href="#">Changes in fair value of contingent consideration</a>						\$ 0		\$ 0												
<a href="#">Undiscounted low range of contingent consideration   €</a>																		0		
<a href="#">Undiscounted high range of contingent consideration</a>																		\$ 9,000,000.0	€ 8,000,000.0	
<a href="#">Payment for contingent consideration</a>	\$ 1,400,000	€ 1,200,000	\$ 1,100,000	€ 1,000,000.0																
<a href="#">Number of contingent consideration annual installments   Installment</a>																				

3

Fair Value Measurements - Asset Acquisition Contingent Consideration - Additional Information (Details)	1 Months Ended				3 Months Ended		9 Months Ended		
	Feb. 28,	Feb. 28,	Feb. 29,	Feb. 29,	Oct.	Apr. 02,	Oct.	Dec. 14,	Dec. 14,
	2021	2021	2020	2020	01, 2021	2021	01, 2021	2016	2016
	USD (\$)	EUR (€)	USD (\$)	EUR (€)	USD (\$)	Installment (\$)	USD (\$)	USD (\$)	EUR (€)
<a href="#">Asset Acquisition Contingent Consideration [Line Items]</a>									
<a href="#">Payment for contingent consideration</a>	\$ 2,200,000	€ 1,800,000	\$ 2,600,000	€ 2,400,000					
<a href="#">Video Signal Processing and Management Technologies</a>									
<a href="#">Asset Acquisition Contingent Consideration [Line Items]</a>									
<a href="#">Date of Acquisition Agreement</a>						Dec. 14, 2016			
<a href="#">Number of contingent consideration annual installments   Installment</a>						4			
<a href="#">Undiscounted range of outcomes, minimum   €</a>									€ 0
<a href="#">Undiscounted range of outcomes, maximum</a>								\$ 6,600,000	€ 5,500,000
<a href="#">Changes in fair value of contingent consideration   \$</a>					\$ 0		\$ 0		

**Fair Values of Assets and  
Liabilities Measured at Fair  
Value on Recurring Basis  
(Details) - USD (\$)  
\$ in Thousands**

**Oct. 01, Dec. 31,  
2021 2020**

**Liabilities**

Contingent considerations - Long-term \$ 3,605 \$ 7,276

Fair Value Measurements Recurring

**Assets**

Cash equivalents 3,089 11,047

Assets, fair value 3,291 11,074

**Liabilities**

Liabilities, fair value 59,084 11,556

Fair Value Measurements Recurring | Prepaid Expenses and Other Current Assets

**Assets**

Foreign currency forward contracts 202 27

Fair Value Measurements Recurring | Accrued Expenses and Other Current Liabilities

**Liabilities**

Contingent considerations - Current 55,469 4,280

Foreign currency forward contracts 10

Fair Value Measurements Recurring | Other Liabilities

**Liabilities**

Contingent considerations - Long-term 3,605 7,276

Fair Value Measurements Recurring | Quoted Prices in Active Markets for Identical Assets  
(Level 1)

**Assets**

Cash equivalents 3,089 11,047

Assets, fair value 3,089 11,047

Fair Value Measurements Recurring | Significant Other Observable Inputs (Level 2)

**Assets**

Assets, fair value 202 27

**Liabilities**

Liabilities, fair value 10

Fair Value Measurements Recurring | Significant Other Observable Inputs (Level 2) | Prepaid  
Expenses and Other Current Assets

**Assets**

Foreign currency forward contracts 202 27

Fair Value Measurements Recurring | Significant Other Observable Inputs (Level 2) |  
Accrued Expenses and Other Current Liabilities

**Liabilities**

Foreign currency forward contracts 10

Fair Value Measurements Recurring | Significant Other Unobservable Inputs (Level 3)

**Liabilities**

Liabilities, fair value 59,074 11,556

[Fair Value Measurements Recurring | Significant Other Unobservable Inputs \(Level 3\) |](#)  
[Accrued Expenses and Other Current Liabilities](#)

**Liabilities**

[Contingent considerations - Current](#) 55,469 4,280

[Fair Value Measurements Recurring | Significant Other Unobservable Inputs \(Level 3\) |](#)  
[Other Liabilities](#)

**Liabilities**

[Contingent considerations - Long-term](#) \$ 3,605 \$ 7,276

**Fair Value Measurements -  
Changes in Fair Value of  
Level 3 Contingent  
Considerations (Details) -  
Significant Other  
Unobservable Inputs (Level  
3)**

**9 Months  
Ended**

**Oct. 01, 2021  
USD (\$)**

**\$ in Thousands**

**Fair Value Liabilities Measured On Recurring Basis Unobservable Input Reconciliation  
[Line Items]**

<u>Beginning balance</u>	\$ 11,556
<u>Acquisition of ATI</u>	51,900
<u>Payments</u>	(4,036)
<u>Fair value adjustments</u>	26
<u>Effect of foreign exchange rates</u>	(372)
<u>Ending balance</u>	\$ 59,074



Fair Value Measurements - Schedule of Fair Value Measurement Inputs and Valuation Techniques (Details)	9 Months Ended										
	Oct. 01, 2021 USD (\$)	Oct. 01, 2021 EUR (€)	Aug. 30, 2021 USD (\$)	Apr. 02, 2021 USD (\$)	Apr. 02, 2021 EUR (€)	Dec. 31, 2020 USD (\$)	Dec. 31, 2020 EUR (€)	Jul. 31, 2019 USD (\$)	Jul. 31, 2019 EUR (€)	Apr. 16, 2019 USD (\$)	Apr. 16, 2019 EUR (€)
\$ in Thousands, € in Millions											
<a href="#">ATI Industrial Automation, Inc.</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Contingent consideration</a>			\$								
			51,900								
<a href="#">ARGES GmbH</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Contingent consideration</a>	\$ 4,300	€ 3.7				\$	5,100	€ 4.1	\$	7,900	€ 7.1
<a href="#">Ingenia-CAT, S.L.</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Contingent consideration</a>			\$	2,900	€ 2.4	\$	2,900	€ 2.3	\$	6,600	€ 5.8
<a href="#">Significant Other Unobservable Inputs (Level 3)</a>											
<a href="#">ATI Industrial Automation, Inc.</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Valuation Technique</a>	novt: Valuation Technique	Monte Carlo Method									
<a href="#">Contingent consideration</a>	\$ 51,900										
<a href="#">Significant Other Unobservable Inputs (Level 3)</a>											
<a href="#">ATI Industrial Automation, Inc.</a>											
<a href="#">EBITDA Risk Premium</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Business acquisition, Percentage Applied</a>	7.2	7.2									
<a href="#">Significant Other Unobservable Inputs (Level 3)</a>											
<a href="#">ATI Industrial Automation, Inc.</a>											
<a href="#">EBITDA Volatility</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Business acquisition, Percentage Applied</a>	27.0	27.0									
<a href="#">Significant Other Unobservable Inputs (Level 3)</a>											
<a href="#">ATI Industrial Automation, Inc.</a>											
<a href="#">Credit Spread</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											
<a href="#">Business acquisition, Percentage Applied</a>	2.1	2.1									
<a href="#">Significant Other Unobservable Inputs (Level 3)</a>											
<a href="#">ARGES GmbH</a>											
<a href="#">Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</a>											

**Nonrecurring Basis [Line Items]**

Valuation Technique novt: Valuation Technique Monte Carlo Method Member  
Contingent consideration \$ 4,282  
Significant Other  
Unobservable Inputs (Level 3)  
| ARGES GmbH | Revenue volatility

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 21.0 21.0  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| ARGES GmbH | Cost of debt

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 2.6 2.6  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| ARGES GmbH | Discount rate

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 3.7 3.7  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| Ingenia-CAT, S.L.

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Valuation Technique novt: Valuation Technique Monte Carlo Method Member  
Contingent consideration \$ 1,493  
Significant Other  
Unobservable Inputs (Level 3)  
| Ingenia-CAT, S.L. | Revenue volatility

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 38.5 38.5  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| Ingenia-CAT, S.L. | Cost of debt

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 3.1 3.1  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| Ingenia-CAT, S.L. | Discount rate

**Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]**

Business acquisition, 9.6 9.6  
Percentage Applied  
Significant Other  
Unobservable Inputs (Level 3)  
| Other Acquisitions

Fair Value Assets And  
Liabilities Measured On  
Recurring And  
Nonrecurring Basis (Line  
Items)

Valuation Technique	us-	us-
	gaap: ValuationTechniqueDiscountedCashFlowMember	gaap: ValuationTechniqueDiscountedCashFlowMember
Contingent consideration	\$ 1,399	

Significant Other  
Unobservable Inputs (Level 3)  
| Other Acquisitions | Discount  
rate

Fair Value Assets And  
Liabilities Measured On  
Recurring And  
Nonrecurring Basis (Line  
Items)

Asset acquisition, Percentage Applied	22.8	22.8
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Foreign Currency Contracts - Additional Information (Details) - Foreign Currency Forward Contracts - USD (\$)	3 Months Ended		9 Months Ended		12 Months Ended
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020	Dec. 31, 2020
<a href="#">Derivative [Line Items]</a>					
<a href="#">Notional amount of foreign currency forward contracts</a>	\$ 48,300,000		\$ 48,300,000		\$ 28,500,000
<a href="#">Net gain (loss) on foreign currency forward contracts</a>			200,000		
<a href="#">Foreign Exchange Transaction Gains (Losses)</a>					
<a href="#">Derivative [Line Items]</a>					
<a href="#">Net gain (loss) on foreign currency forward contracts</a>	\$ 300,000	\$ 1,000,000.0	\$ 900,000	\$ 1,400,000	
<a href="#">Maximum</a>					
<a href="#">Derivative [Line Items]</a>					
<a href="#">Net gain (loss) on foreign currency forward contracts</a>					\$ 100,000

**Goodwill and Intangible  
Assets - Additional  
Information (Details)**

**3 Months Ended  
Jul. 02, 2021  
USD (\$)**

**[Goodwill And Intangible Assets Disclosure \[Abstract\]](#)**

Impairment of goodwill and intangible assets \$ 0

**Summary of Changes in  
Goodwill (Details)  
\$ in Thousands**

**9 Months Ended  
Oct. 01, 2021  
USD (\$)**

**Goodwill And Intangible Assets Disclosure [Abstract]**

<u>Balance at beginning of the period</u>	\$ 285,980
<u>Goodwill acquired from acquisitions</u>	213,915
<u>Effect of foreign exchange rate changes</u>	(6,955)
<u>Balance at end of the period</u>	\$ 492,940

**Goodwill By Reportable  
Segment (Details) - USD (\$)**      **Oct. 01, 2021 Dec. 31, 2020**  
\$ in Thousands

**Goodwill [Line Items]**

<u>Goodwill</u>	\$ 644,169	\$ 437,209
<u>Accumulated impairment of goodwill</u>	(151,229)	(151,229)
<u>Total</u>	492,940	285,980

Photonics

**Goodwill [Line Items]**

<u>Goodwill</u>	215,453	218,517
<u>Accumulated impairment of goodwill</u>	(102,461)	(102,461)
<u>Total</u>	112,992	116,056

Vision

**Goodwill [Line Items]**

<u>Goodwill</u>	161,885	165,195
<u>Accumulated impairment of goodwill</u>	(31,722)	(31,722)
<u>Total</u>	130,163	133,473

Precision Motion

**Goodwill [Line Items]**

<u>Goodwill</u>	266,831	53,497
<u>Accumulated impairment of goodwill</u>	(17,046)	(17,046)
<u>Total</u>	\$ 249,785	\$ 36,451

**Intangible Assets (Details) -****USD (\$)****Oct. 01, 2021 Dec. 31, 2020****\$ in Thousands****Schedule of Intangible Assets Disclosure [Line Items]**

<u>Amortizable intangible assets, gross carrying amount</u>	\$ 450,659	\$ 350,226
<u>Amortizable intangible assets, accumulated amortization</u>	(232,659)	(214,732)
<u>Amortizable intangible assets, net carrying amount</u>	218,000	135,494
<u>Non-amortizable intangible assets</u>	13,027	13,027
<u>Gross carrying amount</u>	463,686	363,253
<u>Net carrying amount</u>	231,027	148,521

**Patents and Developed Technologies****Schedule of Intangible Assets Disclosure [Line Items]**

<u>Amortizable intangible assets, gross carrying amount</u>	190,485	164,430
<u>Amortizable intangible assets, accumulated amortization</u>	(118,535)	(110,572)
<u>Amortizable intangible assets, net carrying amount</u>	71,950	53,858

**Customer Relationships****Schedule of Intangible Assets Disclosure [Line Items]**

<u>Amortizable intangible assets, gross carrying amount</u>	229,369	167,429
<u>Amortizable intangible assets, accumulated amortization</u>	(101,546)	(92,892)
<u>Amortizable intangible assets, net carrying amount</u>	127,823	74,537

**Customer Backlog****Schedule of Intangible Assets Disclosure [Line Items]**

<u>Amortizable intangible assets, gross carrying amount</u>	6,753	
<u>Amortizable intangible assets, accumulated amortization</u>	(563)	
<u>Amortizable intangible assets, net carrying amount</u>	6,190	

**Trademarks and Trade Names****Schedule of Intangible Assets Disclosure [Line Items]**

<u>Amortizable intangible assets, gross carrying amount</u>	24,052	18,367
<u>Amortizable intangible assets, accumulated amortization</u>	(12,015)	(11,268)
<u>Amortizable intangible assets, net carrying amount</u>	\$ 12,037	\$ 7,099



**Amortization Expense of  
Intangible Assets (Details) -  
USD (\$)  
\$ in Thousands**

<b>3 Months Ended</b>		<b>9 Months Ended</b>	
<b>Oct. 01, 2021</b>	<b>Oct. 02, 2020</b>	<b>Oct. 01, 2021</b>	<b>Oct. 02, 2020</b>

**Goodwill And Intangible Assets Disclosure**

**[Abstract]**

<u>Amortization expense – cost of revenue</u>	\$ 3,316	\$ 2,820	\$ 9,275	\$ 8,270
<u>Amortization expense – operating expenses</u>	4,139	3,533	11,300	10,388
<u>Total amortization expense</u>	\$ 7,455	\$ 6,353	\$ 20,575	\$ 18,658

**Estimated Amortization  
Expense (Details) - USD (\$)  
\$ in Thousands**

**Oct. 01, 2021 Dec. 31, 2020**

**Finite Lived Intangible Assets [Line Items]**

<u>2021 (remainder of year)</u>	\$ 9,323	
<u>2022</u>	40,886	
<u>2023</u>	33,542	
<u>2024</u>	27,801	
<u>2025</u>	23,496	
<u>Thereafter</u>	82,952	
<u>Amortizable intangible assets, net carrying amount</u>	218,000	\$ 135,494

**Cost of Revenue**

**Finite Lived Intangible Assets [Line Items]**

<u>2021 (remainder of year)</u>	4,029	
<u>2022</u>	13,854	
<u>2023</u>	12,544	
<u>2024</u>	10,170	
<u>2025</u>	8,579	
<u>Thereafter</u>	22,774	
<u>Amortizable intangible assets, net carrying amount</u>	71,950	

**Operating Expenses**

**Finite Lived Intangible Assets [Line Items]**

<u>2021 (remainder of year)</u>	5,294	
<u>2022</u>	27,032	
<u>2023</u>	20,998	
<u>2024</u>	17,631	
<u>2025</u>	14,917	
<u>Thereafter</u>	60,178	
<u>Amortizable intangible assets, net carrying amount</u>	\$ 146,050	

**Inventories (Details) - USD****(\$)****Oct. 01, 2021 Dec. 31, 2020****\$ in Thousands****[Inventory Disclosure \[Abstract\]](#)**

<u><a href="#">Raw materials</a></u>	\$ 75,445	\$ 55,657
<u><a href="#">Work-in-process</a></u>	21,409	15,487
<u><a href="#">Finished goods</a></u>	20,781	20,234
<u><a href="#">Demo and consigned inventory</a></u>	1,787	1,359
<u><a href="#">Total inventories</a></u>	\$ 119,422	\$ 92,737

**Accrued Expenses and Other  
Current Liabilities (Details) -  
USD (\$)  
\$ in Thousands**

**Oct. 01, 2021 Dec. 31, 2020 Oct. 02, 2020 Dec. 31, 2019**

**Other Liabilities Disclosure [Abstract]**

<u>Accrued compensation and benefits</u>	\$ 20,546	\$ 12,510		
<u>Accrued warranty</u>	4,527	4,919	\$ 5,102	\$ 5,756
<u>Contract liabilities, current portion</u>	9,190	6,173		
<u>Finance lease obligations</u>	590	9,720		
<u>Accrued earn-out and contingent considerations</u>	55,469	10,796		
<u>Other</u>	14,184	9,662		
<u>Total</u>	\$ 104,506	\$ 53,780		

**Accrued Warranty (Details)****- USD (\$)****\$ in Thousands****9 Months Ended****Oct. 01, 2021 Oct. 02, 2020****[Product Warranties Disclosures \[Abstract\]](#)**

<u>Balance at beginning of the period</u>	\$ 4,919	\$ 5,756
<u>Provision charged to cost of revenue</u>	1,215	1,255
<u>Warranty liabilities acquired from acquisitions</u>	541	
<u>Use of provision</u>	(2,075)	(1,941)
<u>Foreign currency exchange rate changes</u>	(73)	32
<u>Balance at end of the period</u>	\$ 4,527	\$ 5,102

**Other Long Term Liabilities****(Details) - USD (\$)****Oct. 01, 2021 Dec. 31, 2020****\$ in Thousands****Other Liabilities Disclosure [Abstract]**

<u>Finance lease obligations</u>	\$ 5,461	\$ 5,908
<u>Accrued pension liabilities</u>	326	1,511
<u>Accrued contingent considerations</u>	3,605	7,276
<u>Other</u>	2,352	2,471
<u>Total</u>	\$ 11,744	\$ 17,166

**Debt (Details) - USD (\$)**  
**\$ in Thousands**

**Oct. 01, 2021 Dec. 31, 2020**

**Debt Instrument [Line Items]**

<u>Total current portion of long-term debt</u>	\$ 5,207	\$ 5,508
<u>Total long-term debt</u>	441,831	194,927
<u>Total Senior Credit Facilities</u>	447,038	200,435
<u>Term Loan</u>		

**Debt Instrument [Line Items]**

<u>Current portion of long-term debt, Gross</u>	5,238	5,545
<u>Long-term debt, Gross</u>	90,092	99,534
<u>Term Loan And Revolving Credit Facility</u>		

**Debt Instrument [Line Items]**

<u>Less: unamortized debt issuance costs</u>	(31)	(37)
<u>Less: unamortized debt issuance costs</u>	(3,549)	(4,368)
<u>Revolving Credit Facility</u>		

**Debt Instrument [Line Items]**

<u>Long-term debt, Gross</u>	\$ 355,288	\$ 99,761
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Debt - Additional Information (Details)	Dec. 31, 2019 USD (\$)	1 Months Ended	9 Months Ended				
		Mar. 31, 2021 EUR (€)	Oct. 01, 2021 USD (\$)	Oct. 01, 2021 EUR (€)	Oct. 02, 2020 USD (\$)	Mar. 27, 2020 USD (\$)	Dec. 31, 2019 EUR (€)
<a href="#">Debt Instrument [Line Items]</a>							
<a href="#">Repayment of debt</a>			\$ 24,036,000		\$ 34,017,000		
<a href="#">Term Loan</a>							
<a href="#">Debt Instrument [Line Items]</a>							
<a href="#">Repayment of debt</a>			\$ 4,000,000.0	€ 3,400,000			
<a href="#">Third Amended and Restated Credit Agreement</a>							
<a href="#">Debt Instrument [Line Items]</a>							
<a href="#">Maximum borrowing capacity</a>	\$ 450,000,000.0						
<a href="#">Third Amended and Restated Credit Agreement   First Amendment Revolving Credit Facility</a>							
<a href="#">Debt Instrument [Line Items]</a>							
<a href="#">Maximum borrowing capacity</a>					\$ 495,000,000.0		
<a href="#">Increased in line of credit facility</a>					145,000,000.0		
<a href="#">Line of credit facility accordion potential feature</a>					\$ 200,000,000.0		
<a href="#">Third Amended and Restated Credit Agreement   Term Loan</a>							
<a href="#">Debt Instrument [Line Items]</a>							
<a href="#">Maximum borrowing capacity</a>	\$ 100,000,000.0					€ 90,200,000	
<a href="#">Senior credit facilities maturity period</a>	5 years						
<a href="#">Senior credit facilities, maturity month and year</a>	2024-12						
<a href="#">Debt instrument, frequency of periodic payment</a>		quarterly					
<a href="#">Quarterly installments payable on term loan   €</a>		€ 1,100,000					



Third Amended and Restated  
Credit Agreement | Revolving  
Credit Facility

**Debt Instrument [Line**  
**Items]**

<u>Maximum borrowing capacity</u>	\$	350,000,000.0		
<u>Senior credit facilities maturity period</u>	5 years			
<u>Senior credit facilities, maturity month and year</u>	2024-12	2024-12	2024-12	
<u>Line of credit facility</u>	\$			
<u>accordion potential feature</u>	200,000,000.0			
<u>Repayment of debt</u>		\$	20,000,000.0	

**Leases - Additional  
Information (Details)  
\$ in Thousands**

**9 Months Ended  
Oct. 01, 2021  
USD (\$)**

**Lessee Lease Description**

**[Line Items]**

Lease renewal terms and  
termination description

Certain leases include one or more options to renew, with renewal terms that can extend the lease term from one to 10 years, and options to terminate the leases within one year.

Purchase of building under  
finance lease

\$ 8,743

Minimum

**Lessee Lease Description**

**[Line Items]**

Lease agreement expiration  
year

2021

Lease renewal terms

1 year

Maximum

**Lessee Lease Description**

**[Line Items]**

Lease agreement expiration  
year

2034

Lease renewal terms

10 years

Lease termination period

1 year

Land | Maximum

**Lessee Lease Description**

**[Line Items]**

Lease agreement expiration  
year

2078

Summary of Components of Lease Costs (Details) - USD ( \$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<a href="#">Leases [Abstract]</a>				
<a href="#">Operating lease cost</a>	\$ 2,418	\$ 1,786	\$ 6,213	\$ 5,693
<a href="#">Finance lease cost</a>				
<a href="#">Amortization of right-of-use assets</a>	149	253	451	748
<a href="#">Interest on lease liabilities</a>	85	108	257	326
<a href="#">Variable lease cost</a>	275	320	834	1,043
<a href="#">Total lease cost</a>	\$ 2,927	\$ 2,467	\$ 7,755	\$ 7,810

**Summary of Balance Sheet  
Information Related to  
Leases (Details) - USD (\$)  
\$ in Thousands**

**Oct. 01, 2021**

**Dec. 31, 2020**

**Operating leases**

<u>Operating lease right-of-use assets</u>	\$ 43,459	\$ 34,444
<u>Current portion of operating lease liabilities</u>	7,575	6,188
<u>Operating lease liabilities</u>	40,850	32,802
<u>Total operating lease liabilities</u>	48,425	38,990

**Finance leases**

<u>Finance lease right-of-use assets gross</u>	9,582	19,819
<u>Finance lease right-of-use assets accumulated depreciation</u>	(4,918)	(4,934)
<u>Finance lease assets included in property, plant and equipment, net</u>	\$ 4,664	\$ 14,885
<u>Finance Lease, Right-of-Use Asset, Statement of Financial Position [Extensible List]</u>	Property, plant and equipment, net	Property, plant and equipment, net
<u>Current portion of finance lease liabilities</u>	\$ 590	\$ 9,720
<u>Finance Lease, Liability, Current, Statement of Financial Position [Extensible List]</u>	Accrued expenses and other current liabilities	Accrued expenses and other current liabilities
<u>Noncurrent portion of finance lease liabilities</u>	\$ 5,461	\$ 5,908
<u>Finance Lease, Liability, Noncurrent, Statement of Financial Position [Extensible List]</u>	Other liabilities	Other liabilities
<u>Total finance lease liabilities</u>	\$ 6,051	\$ 15,628

**Weighted-average remaining lease term (in years):**

<u>Operating leases</u>	8 years 4 months 24 days	9 years 3 months 18 days
<u>Finance leases</u>	7 years 9 months 18 days	3 years 6 months

**Weighted-average discount rate:**

<u>Operating leases</u>	4.96%	5.50%
<u>Finance leases</u>	5.54%	3.00%

**Summary of Cash Flow  
Information Related to  
Leases (Details) - USD (\$)  
\$ in Thousands**

**9 Months Ended**  
**Oct. 01, 2021 Oct. 02, 2020**

**Cash paid for amounts included in lease liabilities:**

<u>Operating cash flows from finance leases</u>	\$ 257	\$ 357
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<u>Operating cash flows from operating leases</u>	5,562	5,088
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<u>Financing cash flows from finance leases</u>	9,166	1,034
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**Supplemental non-cash information:**

<u>Right-of-use assets obtained in exchange for new operating lease liabilities</u>	\$ 15,340	\$ 3,050
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**Future Minimum Lease  
Payments Under Operating  
and Finance Leases (Details) Oct. 01, 2021 Dec. 31, 2020  
- USD (\$)**

**\$ in Thousands**

**Operating Lease**

<u>2021 (remainder of year)</u>	\$ 2,141	
<u>2022</u>	9,539	
<u>2023</u>	8,241	
<u>2024</u>	7,230	
<u>2025</u>	6,967	
<u>Thereafter</u>	27,090	
<u>Total minimum lease payments</u>	61,208	
<u>Less: Interest</u>	(12,783)	
<u>Present value of lease liabilities</u>	48,425	\$ 38,990

**Finance Lease**

<u>2021 (remainder of year)</u>	227	
<u>2022</u>	907	
<u>2023</u>	930	
<u>2024</u>	954	
<u>2025</u>	954	
<u>Thereafter</u>	3,486	
<u>Total minimum lease payments</u>	7,458	
<u>Less: Interest</u>	(1,407)	
<u>Present value of lease liabilities</u>	\$ 6,051	\$ 15,628

Preferred and Common Shares and Share-based Compensation - Additional Information (Details) - USD (\$)	1 Months Ended		3 Months Ended		9 Months Ended						
	May 31, 2021	Feb. 28, 2021	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020	May 13, 2021	May 12, 2021	Dec. 31, 2020	Feb. 29, 2020	Oct. 31, 2018
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Preferred shares, Authorized Preferred shares, voting rights	7,000,000.0		7,000,000		7,000,000				7,000,000		
	one vote per share										
Preferred shares, Issued			0		0				0		
Preferred shares, outstanding			0		0				0		
Common stock repurchase program authorized amount									\$	\$	
									50,000,000.0	25,000,000.0	
Share-based compensation expense recognized			\$	\$	\$	\$					
			8,490,000	7,225,000	20,169,000	16,072,000					
Requisite service period		5 years									
Selling, General and Administrative Expenses											
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Share-based compensation expense recognized			\$	\$	\$	\$					
			4,360,000	4,265,000	13,123,000	10,225,000					
Amended and Restated 2010 Incentive Plan											
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Increase from and increase to, number of shares authorized for issuance									6,148,613	4,398,613	
Amended and Restated 2010 Incentive Plan   Deferred Stock Units											
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Number of outstanding shares			91,000		91,000				162,000		
Amended and Restated 2010 Incentive Plan   Stock Options											
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Fully-vested stock options outstanding			60,000		60,000						
Stock options granted					0						
Amended and Restated 2010 Incentive Plan   Restricted Stock Units and Deferred Stock Units											
<b>Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</b>											
Total fair value of stock units vested					\$						
					68,000,000.0						
Amended and Restated 2010 Incentive Plan   Restricted											

[Stock Units and Deferred  
Stock Units | Board of  
Directors | Selling, General  
and Administrative Expenses](#)  
**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Share-based compensation  
expense recognized](#) \$ 1,100,000 \$ 1,000,000.0

[Amended and Restated 2010  
Incentive Plan | Restricted  
Stock Units \(RSUs\) |  
Minimum](#)

**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Vesting period](#) 0 years

[Amended and Restated 2010  
Incentive Plan | Restricted  
Stock Units \(RSUs\) |  
Maximum](#)

**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Vesting period](#) 5 years

[Amended and Restated 2010  
Incentive Plan | EPS  
Performance-based Restricted  
Stock Units](#)

**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Vesting period](#) 3 years

[Amended and Restated 2010  
Incentive Plan | EPS  
Performance-based Restricted  
Stock Units | Minimum](#)

**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares](#) 0.00%

[Amended and Restated 2010  
Incentive Plan | EPS  
Performance-based Restricted  
Stock Units | Maximum](#)

**[Share Based Compensation  
Arrangement By Share  
Based Payment Award \[Line  
Items\]](#)**

[Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares](#) 200.00%

[Amended and Restated 2010  
Incentive Plan | TSR  
Performance-based Restricted  
Stock Units](#)



**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Vesting period

3 years

Amended and Restated 2010  
Incentive Plan | TSR

Performance-based Restricted  
Stock Units | Minimum

**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares

0.00%

Amended and Restated 2010  
Incentive Plan | TSR

Performance-based Restricted  
Stock Units | Maximum

**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares

200.00%

Amended and Restated 2010  
Incentive Plan | Operating  
Cash Flow Performance Based  
Restricted Stock Units

**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares

100.00%

Amended and Restated 2010  
Incentive Plan | Operating  
Cash Flow Performance Based  
Restricted Stock Units |

Vesting in Four Year

**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Vesting period

4 years

Range of percentage of shares  
to be issued upon settlement  
following vesting of target  
number of shares

50.00%

Amended and Restated 2010  
Incentive Plan | Operating  
Cash Flow Performance Based  
Restricted Stock Units |

Vesting in Five Year

**Share Based Compensation  
Arrangement By Share  
Based Payment Award [Line  
Items]**

Vesting period

5 years

<a href="#">Range of percentage of shares to be issued upon settlement following vesting of target number of shares</a>	50.00%	
<a href="#">Amended and Restated 2010 Incentive Plan   Performance Stock Units</a>		
<a href="#">Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</a>		
<a href="#">Total fair value of stock units vested</a>		\$ 9,300,000
<a href="#">Range of percentage of shares to be issued upon settlement following vesting of target number of shares</a>		160.00%
<a href="#">Maximum number of common shares to be earned under these PSU grants</a>	286,000	286,000
<a href="#">2018 and 2020 Repurchase Plans</a>		
<a href="#">Share Based Compensation Arrangement By Share Based Payment Award [Line Items]</a>		
<a href="#">Available for share repurchases</a>	\$ 59,500,000	\$ 59,500,000

**Share-Based Compensation  
Expense Recorded in the  
Consolidated Statements of  
Operations (Details) - USD  
(\$)**

**\$ in Thousands**

<b>3 Months Ended</b>		<b>9 Months Ended</b>	
<b>Oct. 01, 2021</b>	<b>Oct. 02, 2020</b>	<b>Oct. 01, 2021</b>	<b>Oct. 02, 2020</b>

**Employee Service Share Based Compensation Allocation Of  
Recognized Period Costs [Line Items]**

Share-based compensation expense

\$ 8,490    \$ 7,225    \$ 20,169    \$ 16,072

Selling, general and administrative

**Employee Service Share Based Compensation Allocation Of  
Recognized Period Costs [Line Items]**

Share-based compensation expense

4,360    4,265    13,123    10,225

Research and development and engineering

**Employee Service Share Based Compensation Allocation Of  
Recognized Period Costs [Line Items]**

Share-based compensation expense

534    1,150    1,776    2,204

Cost of Revenue

**Employee Service Share Based Compensation Allocation Of  
Recognized Period Costs [Line Items]**

Share-based compensation expense

631    1,589    2,305    3,185

Restructuring, acquisition, and related costs

**Employee Service Share Based Compensation Allocation Of  
Recognized Period Costs [Line Items]**

Share-based compensation expense

\$ 2,965    \$ 221    \$ 2,965    \$ 458

**Restricted Stock Units and  
Deferred Stock Units Issued  
and Outstanding (Details) -  
Amended and Restated 2010  
Incentive Plan - Restricted  
Stock Units and Deferred  
Stock Units**

**shares in Thousands**

**9 Months Ended**

**Oct. 01, 2021  
\$ / shares  
shares**

**Restricted Stock Units**

<u>Unvested, Beginning Balance</u>	625
<u>Granted</u>	169
<u>Vested</u>	(485)
<u>Forfeited</u>	(20)
<u>Unvested, Ending Balance</u>	289
<u>Expected to vest at end of period</u>	272

**Weighted Average Grant Date Fair Value**

<u>Unvested, Beginning Balance   \$ / shares</u>	\$ 58.79
<u>Granted   \$ / shares</u>	136.85
<u>Vested   \$ / shares</u>	51.21
<u>Forfeited   \$ / shares</u>	103.20
<u>Unvested, Ending Balance   \$ / shares</u>	\$ 113.94

**Performance-Based Awards  
Issued and Outstanding  
(Details) - Amended and  
Restated 2010 Incentive Plan  
- Performance Stock Units  
shares in Thousands**

**9 Months Ended**

**Oct. 01, 2021**

**\$ / shares**

**shares**

**Performance-based Awards**

Unvested, Beginning Balance 142

Granted 67

Performance adjustment 28

Vested (75)

Unvested, Ending Balance 162

Expected to vest at end of period 177

**Weighted Average Grant Date Fair Value**

Unvested, Beginning Balance | \$ / shares \$ 88.99

Granted | \$ / shares 150.89

Performance adjustment | \$ / shares 67.72

Vested | \$ / shares 64.25

Unvested, Ending Balance | \$ / shares \$ 122.26

**Fair Value of TSR**  
**Performance-Based**  
**Restricted Stock Units**  
**Estimated Using Monte-**  
**Carol Valuation Method**  
**(Details) - TSR**  
**Performance-based**  
**Restricted Stock Units**

**9 Months Ended**

**Oct. 01, 2021**  
**\$ / shares**

**Share Based Compensation Arrangement By Share Based Payment Award [Line Items]**

<u>Grant-date stock price</u>	\$ 138.23
<u>Expected volatility</u>	42.44%
<u>Risk-free interest rate</u>	0.22%
<u>Expected annual dividend yield</u>	0.00%
<u>Fair value</u>	\$ 166.64

Income Taxes - Additional Information (Details)	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Income Taxes [Line Items]</u></b>				
<u>Effective tax rate on income from operations</u>	(0.60%)	17.60%	2.00%	5.20%
<u>Effective tax rate upon vesting of certain share based compensation awards</u>			14.50%	7.90%
<u>Effective tax rate upon valuation allowance release</u>				3.30%
<u>Canada Revenue Agency   CANADA</u>				
<b><u>Income Taxes [Line Items]</u></b>				
<u>Statutory tax rate</u>	29.00%	29.00%	29.00%	29.00%

Schedule of Restructuring, Acquisition and Related Costs (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Total restructuring charges</u>	\$ 5,185	\$ 1,074	\$ 7,896	\$ 2,427
<u>Acquisition and related charges</u>	2,935	613	8,589	3,164
<u>Total restructuring, acquisition, and related costs</u>	8,120	1,687	16,485	5,591
<u>2020 Restructuring</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Total restructuring charges</u>	\$ 5,185	1,006	7,688	1,006
<u>2019 Restructuring</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Total restructuring charges</u>		\$ 68	\$ 208	667
<u>2018 Restructuring</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Total restructuring charges</u>				\$ 754



Restructuring, Acquisition, and Related Costs - Additional Information (Details) - USD (\$)	3 Months Ended			9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020		Oct. 01, 2021	Oct. 02, 2020
<a href="#">Restructuring, Acquisition, and Related Costs [Line Items]</a>					
<a href="#">Total restructuring charges</a>	\$ 5,185,000	\$ 1,074,000	\$ 7,896,000		\$ 2,427,000
<a href="#">Acquisition and related charges</a>	2,935,000	613,000	8,589,000		3,164,000
<a href="#">Legal costs</a>	100,000	400,000	1,900,000		1,000,000.0
<a href="#">Finders' Fees, Legal, Valuation And Other Professional Or Consulting Fees</a>					
<a href="#">Restructuring, Acquisition, and Related Costs [Line Items]</a>					
<a href="#">Acquisition and related charges</a>	2,900,000		4,700,000		100,000
<a href="#">Earn-out Agreement</a>					
<a href="#">Restructuring, Acquisition, and Related Costs [Line Items]</a>					
<a href="#">Acquisition and related charges</a>		200,000	\$ 1,900,000		2,000,000.0
<a href="#">Maximum   Finders' Fees, Legal, Valuation And Other Professional Or Consulting Fees</a>					
<a href="#">Restructuring, Acquisition, and Related Costs [Line Items]</a>					
<a href="#">Acquisition and related charges</a>		100,000			
<a href="#">Maximum   Earn-out Agreement</a>					
<a href="#">Restructuring, Acquisition, and Related Costs [Line Items]</a>					
<a href="#">Acquisition and related charges</a>	100,000				
<a href="#">2020 Restructuring Restructuring, Acquisition, and Related Costs [Line Items]</a>					

Restructuring and related cost description

As a result of the Company's ongoing evaluations and efforts to reduce its operating costs, while improving efficiency and effectiveness, the Company initiated the 2020 restructuring program in the third quarter of 2020. This program is focused on reducing operating complexity in the Company, including reducing infrastructure costs and streamlining the Company's operating model to better serve its customers. In addition, the program will be focused on cost reduction actions that improve gross margins for the overall company. During the three and nine months ended October 1, 2021, the Company recorded \$5.2 million and \$7.7 million, respectively, in severance and other costs in connection with the 2020 restructuring program. As of October 1, 2021, the Company had incurred cumulative costs related to this restructuring plan totaling \$10.4 million. The Company anticipates substantially completing the 2020 restructuring program in the second quarter of 2022 and expects to incur additional restructuring charges of \$3.0 million to \$4.0 million related to the 2020 restructuring program.

<u>Total restructuring charges</u>	5,185,000	1,006,000	\$ 7,688,000	1,006,000
<u>Restructuring cumulative costs incurred</u>	10,400,000		10,400,000	
<u>2020 Restructuring   Minimum Restructuring, Acquisition, and Related Costs [Line Items]</u>				
<u>Restructuring costs</u>	3,000,000.0		3,000,000.0	
<u>2020 Restructuring   Maximum Restructuring, Acquisition, and Related Costs [Line Items]</u>				
<u>Restructuring costs</u>	4,000,000.0		4,000,000.0	
<u>2020 Restructuring   Severance and Related Costs Restructuring, Acquisition, and Related Costs [Line Items]</u>				
<u>Total restructuring charges</u>	5,200,000		\$ 7,700,000	
<u>2019 Restructuring</u>				

**Restructuring, Acquisition,  
and Related Costs [Line  
Items]**

Restructuring and related cost  
description

During the fourth quarter of 2018, the Company implemented a restructuring plan intended to realign operations, reduce costs, achieve operational efficiencies and focus resources on growth initiatives (the “2019 restructuring plan”). During the three and nine months ended October 1, 2021, the Company incurred zero and \$0.2 million, respectively, in severance and related costs in connection with the 2019 restructuring plan. As of October 2, 2021, the Company incurred cumulative costs related to this restructuring plan totaling \$9.0 million. The 2019 restructuring program was completed in the first quarter of 2021.

<u>Total restructuring charges</u>	\$ 68,000	\$ 208,000	\$ 667,000
<u>Restructuring cumulative costs incurred</u>	9,000,000.0	9,000,000.0	
<u>2019 Restructuring   Severance and Related Costs</u>			
<b><u>Restructuring, Acquisition, and Related Costs [Line Items]</u></b>			
<u>Total restructuring charges</u>	\$ 0	\$ 200,000	

Summary of Restructuring Charges by Reportable Segment (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Restructuring costs</u>	\$ 5,185	\$ 1,074	\$ 7,896	\$ 2,427
<u>2020 Restructuring</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Restructuring costs</u>	5,185	1,006	7,688	1,006
<u>2020 Restructuring   Photonics</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Restructuring costs</u>	2,349		2,839	
<u>2020 Restructuring   Vision</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Restructuring costs</u>	193	\$ 1,006	890	\$ 1,006
<u>2020 Restructuring   Precision Motion</u>				
<b><u>Restructuring Cost And Reserve [Line Items]</u></b>				
<u>Restructuring costs</u>	\$ 2,643		\$ 3,959	

**Summary of Accrual  
Activities by Components  
Related to Company's  
Restructuring Charges  
(Details)  
\$ in Thousands**

**9 Months Ended**

**Oct. 01, 2021  
USD (\$)**

**Restructuring Cost And Reserve [Line Items]**

<u>Accrued expense beginning balance</u>	\$ 1,800	
<u>Restructuring charges</u>	7,896	
<u>Cash payments</u>	(2,333)	
<u>Non-cash charges and other adjustments</u>	(3,486)	[1]
<u>Accrued expense ending balance</u>	3,877	

Severance

**Restructuring Cost And Reserve [Line Items]**

<u>Accrued expense beginning balance</u>	1,681	
<u>Restructuring charges</u>	6,292	
<u>Cash payments</u>	(1,837)	
<u>Non-cash charges and other adjustments</u>	(2,981)	[1]
<u>Accrued expense ending balance</u>	3,155	

Facility

**Restructuring Cost And Reserve [Line Items]**

<u>Accrued expense beginning balance</u>	116	
<u>Restructuring charges</u>	1,183	
<u>Cash payments</u>	(215)	
<u>Non-cash charges and other adjustments</u>	(505)	[1]
<u>Accrued expense ending balance</u>	579	

Other Restructuring Charges

**Restructuring Cost And Reserve [Line Items]**

<u>Accrued expense beginning balance</u>	3	
<u>Restructuring charges</u>	421	
<u>Cash payments</u>	(281)	
<u>Accrued expense ending balance</u>	\$ 143	

[1] Non-cash charges included stock compensation charges amounting to \$3.0 million associated with severance agreements for certain employees.

**Summary of Accrual  
Activities by Components  
Related to Company's  
Restructuring Charges  
(Parenthetical) (Details) -  
USD (\$)  
\$ in Thousands**

**3 Months Ended**

**9 Months Ended**

**Oct. 01, 2021 Oct. 02, 2020 Oct. 01, 2021 Oct. 02, 2020**

**Restructuring Cost And Reserve [Line Items]**

<u>Share-based compensation expense recognized</u>	\$ 8,490	\$ 7,225	\$ 20,169	\$ 16,072
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**Severance and Related Costs**

**Restructuring Cost And Reserve [Line Items]**

<u>Share-based compensation expense recognized</u>			\$ 3,000	
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**Commitment and  
Contingencies - Additional  
Information (Details) - USD  
(\$)**

**3 Months Ended**

**Jul. 02, 2021    Oct. 01, 2021**

**[Commitments And Contingencies Disclosure \[Abstract\]](#)**

Purchase commitments

\$ 17,900,000

Loss contingency, damages payment

\$ 0

**Segment Information -  
Additional Information  
(Details)**

**9 Months Ended  
Oct. 01, 2021  
Segment  
EndMarket**

**Segment Reporting [Abstract]**

Number of reportable segments | Segment 3

Number of primary end market segments | EndMarket 2



**Revenue, Gross Profit, Gross Profit Margin and Operating Income (Loss) by Reportable Segment (Details) - USD (\$)**  
\$ in Thousands

**3 Months Ended**

**9 Months Ended**

**Oct. 01, 2021 Oct. 02, 2020 Oct. 01, 2021 Oct. 02, 2020**

**Segment Reporting Information [Line Items]**

<u>Revenue</u>	\$ 177,726	\$ 142,929	\$ 507,833	\$ 443,125
<u>Gross Profit</u>	\$ 76,298	\$ 59,105	\$ 217,444	\$ 182,252
<u>Gross profit margin percentage</u>	42.90%	41.40%	42.80%	41.10%
<u>Operating Income (Loss)</u>	\$ 15,275	\$ 11,866	\$ 42,366	\$ 38,817

Operating Segments | Photonics

**Segment Reporting Information [Line Items]**

<u>Revenue</u>	55,263	46,394	176,113	149,337
<u>Gross Profit</u>	\$ 25,311	\$ 20,166	\$ 83,014	\$ 65,725
<u>Gross profit margin percentage</u>	45.80%	43.50%	47.10%	44.00%
<u>Operating Income (Loss)</u>	\$ 9,294	\$ 7,026	\$ 35,885	\$ 22,878

Operating Segments | Vision

**Segment Reporting Information [Line Items]**

<u>Revenue</u>	65,346	64,299	196,429	198,047
<u>Gross Profit</u>	\$ 24,763	\$ 24,586	\$ 76,132	\$ 75,676
<u>Gross profit margin percentage</u>	37.90%	38.20%	38.80%	38.20%
<u>Operating Income (Loss)</u>	\$ 5,606	\$ 3,799	\$ 12,178	\$ 14,098

Operating Segments | Precision Motion

**Segment Reporting Information [Line Items]**

<u>Revenue</u>	57,117	32,236	135,291	95,741
<u>Gross Profit</u>	\$ 27,743	\$ 15,011	\$ 64,694	\$ 42,753
<u>Gross profit margin percentage</u>	48.60%	46.60%	47.80%	44.70%
<u>Operating Income (Loss)</u>	\$ 14,957	\$ 7,675	\$ 34,681	\$ 20,728

Unallocated Corporate and Shared Services

**Segment Reporting Information [Line Items]**

<u>Gross Profit</u>	(1,519)	(658)	(6,396)	(1,902)
<u>Operating Income (Loss)</u>	\$ (14,582)	\$ (6,634)	\$ (40,378)	\$ (18,887)

Depreciation and Amortization Expenses by Reportable Segment (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Depreciation and Amortization Expenses</u></b>				
<u>Depreciation and amortization expenses</u>	\$ 10,890	\$ 9,596	\$ 30,613	\$ 28,363
<u>Unallocated Corporate and Shared Services</u>				
<b><u>Depreciation and Amortization Expenses</u></b>				
<u>Depreciation and amortization expenses</u>	59	67	201	160
<u>Photonics   Operating Segments</u>				
<b><u>Depreciation and Amortization Expenses</u></b>				
<u>Depreciation and amortization expenses</u>	2,901	2,864	8,703	8,303
<u>Vision   Operating Segments</u>				
<b><u>Depreciation and Amortization Expenses</u></b>				
<u>Depreciation and amortization expenses</u>	5,239	5,296	15,793	15,845
<u>Precision Motion   Operating Segments</u>				
<b><u>Depreciation and Amortization Expenses</u></b>				
<u>Depreciation and amortization expenses</u>	\$ 2,691	\$ 1,369	\$ 5,916	\$ 4,055

Schedule of Geographic Revenue (Details) - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	\$ 177,726	\$ 142,929	\$ 507,833	\$ 443,125
<a href="#">United States</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	72,972	57,635	191,699	171,364
<a href="#">Germany</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	25,313	18,885	71,448	64,266
<a href="#">Rest of Europe</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	34,163	30,483	105,338	94,281
<a href="#">China</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	22,230	17,409	68,286	50,285
<a href="#">Rest of Asia-Pacific</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	21,256	16,414	64,765	55,956
<a href="#">Other Countries</a>				
<a href="#">Segment Reporting Information [Line Items]</a>				
<a href="#">Revenue</a>	\$ 1,792	\$ 2,103	\$ 6,297	\$ 6,973

Schedule of Revenue by End Market (Details)	3 Months Ended		9 Months Ended	
	Oct. 01, 2021	Oct. 02, 2020	Oct. 01, 2021	Oct. 02, 2020
<b><u>Segment Reporting Information [Line Items]</u></b>				
<u>Total revenue by end market</u>	100.00%	100.00%	100.00%	100.00%
<u>Advanced Industrial</u>				
<b><u>Segment Reporting Information [Line Items]</u></b>				
<u>Total revenue by end market</u>	47.00%	46.00%	47.00%	44.00%
<u>Medical</u>				
<b><u>Segment Reporting Information [Line Items]</u></b>				
<u>Total revenue by end market</u>	53.00%	54.00%	53.00%	56.00%

**Subsequent Events -  
Additional Information  
(Details) - Third Amended  
and Restated Credit  
Agreement - USD (\$)**

**Oct. 05, 2021   Oct. 04, 2021   Dec. 31, 2019**

**Subsequent Event [Line Items]**

<u>Maximum borrowing capacity</u>		\$ 450,000,000.0
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Revolving Credit Facility

**Subsequent Event [Line Items]**

<u>Maximum borrowing capacity</u>		350,000,000.0
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<u>Line of credit facility accordion potential feature</u>		\$ 200,000,000.0
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Revolving Credit Facility | Subsequent Event

**Subsequent Event [Line Items]**

<u>Maximum borrowing capacity</u>		\$ 495,000,000.0
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Fourth Amendment Revolving Credit Facility | Subsequent Event

**Subsequent Event [Line Items]**

<u>Increased in line of credit facility</u>		\$ 200,000,000.0
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<u>Maximum borrowing capacity</u>		695,000,000.0
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<u>Line of credit facility accordion potential feature</u>		\$ 200,000,000.0
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