

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

**CONDUENT Inc**

CIK: **1677703** | IRS No.: **812983623** | State of Incorporation: **NY** | Fiscal Year End: **1231**  
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SIC: **7389** Business services, nec

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended: September 30, 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 Number 001-37817



**CONDUENT INCORPORATED**

(Exact Name of Registrant as specified in its charter)

New York

(State or other jurisdiction of  
incorporation or organization)

81-2983623

(IRS Employer  
Identification No.)

100 Campus Drive, Suite 200,  
Florham Park, New Jersey

(Address of principal executive offices)

07932

(Zip Code)

(844) 663-2638

(Registrant's telephone number, including area code)

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 Stock, \$0.01 par value	CNDT	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.

Accelerated

Large accelerated filer  Accelerated filer  Non-accelerated filer  Small reporting company  Emerging growth company

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

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

<u>Class</u>	<u>Outstanding at October 31, 2021</u>
Common Stock, \$0.01 par value	212,793,998

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### **FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q (Form 10-Q) and any exhibits to this Form 10-Q may contain "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. The words "anticipate," "believe," "estimate," "expect," "plan," "intend," "will," "aim," "should," "could," "forecast," "target," "may," "continue to," "if," "growing," "projected," "potential," "likely," and similar expressions, as they relate to us, are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. In addition, all statements regarding the anticipated effects of the novel coronavirus, or COVID-19, pandemic and the responses thereto, including the pandemic's impact on general economic and market conditions, as well as on our business, customers, and markets, results of operations and financial condition and anticipated actions to be taken by management to sustain our business during the economic uncertainty caused by the pandemic and related governmental and business actions, as well as other statements that are not strictly historical in nature, are forward looking. These statements reflect our current views with respect to future events and are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those expressed or implied herein as anticipated, believed, estimated, expected or intended or using other similar expressions.

In accordance with the provisions of the Litigation Reform Act, we are making investors aware that such forward-looking statements, because they relate to future events, are by their very nature subject to many important factors and uncertainties that could cause actual results to differ materially from those contemplated by the forward-looking statements contained in this Form 10-Q, any exhibits to this Form 10-Q and other public statements we make. Our actual results may vary materially from those expressed or implied in our forward-looking statements. These forward-looking statements are also subject to the significant continuing impact of the COVID-19 pandemic on our business, operations, financial results and financial condition, which is dependent on developments which are highly uncertain and cannot be predicted.

Important factors and uncertainties that could cause our actual results to differ materially from those in our forward-looking statements include, but are not limited to: the significant continuing effects of the ongoing COVID-19 pandemic on our business, operations, financial results and financial condition, which is dependent on developments which are highly uncertain and cannot be predicted; government appropriations and termination rights contained in our government contracts; our ability to renew commercial and government contracts, including contracts awarded through competitive bidding processes; our ability to recover capital and other investments in connection with our contracts; our reliance on third-party providers; our ability to deliver on our contractual obligations properly and on time; changes in interest in outsourced business process services; risk and impact of geopolitical events, natural disasters and other factors (such as pandemics, including coronavirus) in a particular country or region on our workforce, customers and vendors; claims of infringement of third-party intellectual property rights; our ability to estimate the scope of work or the costs of performance in our contracts; the loss of key senior management and our ability to attract and retain necessary technical personnel and qualified subcontractors; increases in the cost of telephone and data services or significant interruptions in such services; our failure to develop new service offerings and protect our intellectual property rights; our ability to modernize our information technology infrastructure and consolidate data centers; the failure to comply with laws relating to individually identifiable information and personal health information; the failure to comply with laws relating to processing certain financial transactions, including payment card transactions and debit or credit card transactions; breaches of our information systems or security systems or any service interruptions; our ability to comply with data security standards; changes in tax and other laws and regulations; risk and impact of potential goodwill and other asset impairments; our significant indebtedness; our ability to obtain adequate pricing for our services and to improve our cost structure; our ability to collect our receivables, including those for unbilled services; a decline in revenues from, or a loss of, or a reduction in business from or failure of significant clients; fluctuations in our non-recurring revenue; our failure to maintain a satisfactory credit rating; our ability to receive dividends or other payments from our subsidiaries; developments in various contingent liabilities that are not reflected on our balance sheet, including those arising as a result of being involved in a variety of claims, lawsuits, investigations and proceedings; conditions abroad, including local economics, political environments, fluctuating foreign currencies and shifting

regulatory schemes; changes in government regulation and economic, strategic, political and social conditions; changes in the volatility of our stock price and the risk of litigation following a decline in the price of our stock; the impact of the ongoing COVID-19 pandemic; and other factors that are set forth in the “Risk Factors” section, the “Legal Proceedings” section, the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section and other sections of this Quarterly Report on Form 10-Q as well as in our 2020 Annual Report on Form 10-K filed with the Securities and Exchange Commission (SEC) and any subsequent Quarterly Report on Form 10-Q and Current Report on Form 8-K. Any forward-looking statements made by us in this Quarterly Report on Form 10-Q speak only as of the date on which they are made. We are under no obligation to, and expressly disclaim any obligation to, update or alter our forward-looking statements, whether as a result of new information, subsequent events or otherwise.

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September 30, 2021

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For additional information about Conduent Incorporated and access to our Annual Reports to Shareholders and SEC filings, free of charge, please visit our website at <https://investor.conduent.com/>. Any information on or linked from the website is not incorporated by reference into this Form 10-Q.

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### PART I — FINANCIAL INFORMATION

#### ITEM 1 — FINANCIAL STATEMENTS (UNAUDITED)

##### CONDUENT INCORPORATED CONDENSED CONSOLIDATED STATEMENTS OF INCOME (LOSS) (UNAUDITED)

(in millions, except per share data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenue</b>	\$ 1,038	\$ 1,041	\$ 3,092	\$ 3,108
<b>Operating Costs and Expenses</b>				
Cost of services (excluding depreciation and amortization)	776	779	2,335	2,406
Selling, general and administrative (excluding depreciation and amortization)	131	122	382	349
Research and development (excluding depreciation and amortization)	2	—	3	1
Depreciation and amortization	84	112	265	344
Restructuring and related costs	10	20	31	56
Interest expense	12	14	38	46
(Gain) loss on divestitures and transaction costs	—	8	1	14
Litigation costs	—	—	2	20
Loss on extinguishment of debt	—	—	2	—
Other (income) expenses, net	4	(1)	4	—
<b>Total Operating Costs and Expenses</b>	<b>1,019</b>	<b>1,054</b>	<b>3,063</b>	<b>3,236</b>
<b>Income (Loss) Before Income Taxes</b>	<b>19</b>	<b>(13)</b>	<b>29</b>	<b>(128)</b>
Income tax expense (benefit)	8	(6)	17	(21)
<b>Net Income (Loss)</b>	<b>\$ 11</b>	<b>\$ (7)</b>	<b>\$ 12</b>	<b>\$ (107)</b>
<b>Net Earnings (Loss) per Share:</b>				
Basic	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
Diluted	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

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### CONDUENT INCORPORATED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) (UNAUDITED)

(in millions)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
<b>Net Income (Loss)</b>	\$ 11	\$ (7)	\$ 12	\$ (107)
<b>Other Comprehensive Income (Loss), Net<sup>(1)</sup></b>				
Currency translation adjustments, net	(16)	11	(23)	(15)
Unrecognized gains (losses), net	—	1	(1)	—
Changes in benefit plans, net	—	—	(1)	1
<b>Other Comprehensive Income (Loss), Net</b>	(16)	12	(25)	(14)
<b>Comprehensive Income (Loss), Net</b>	\$ (5)	\$ 5	\$ (13)	\$ (121)

(1) All amounts are net of tax. Tax effects were immaterial.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

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## CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)

(in millions, except share data in thousands)

	September 30, 2021	December 31, 2020
<b>Assets</b>		
Cash and cash equivalents	\$ 394	\$ 450
Accounts receivable, net	701	670
Contract assets	159	151
Other current assets	257	306
<b>Total current assets</b>	<b>1,511</b>	<b>1,577</b>
Land, buildings and equipment, net	273	305
Operating lease right-of-use assets	243	246
Intangible assets, net	84	187
Goodwill	1,506	1,528
Other long-term assets	475	413
<b>Total Assets</b>	<b>\$ 4,092</b>	<b>\$ 4,256</b>
<b>Liabilities and Equity</b>		
Current portion of long-term debt	\$ 21	\$ 90
Accounts payable	169	182
Accrued compensation and benefits costs	252	237
Unearned income	111	133
Other current liabilities	434	450
<b>Total current liabilities</b>	<b>987</b>	<b>1,092</b>
Long-term debt	1,384	1,420
Deferred taxes	87	97
Operating lease liabilities	195	207
Other long-term liabilities	114	108
<b>Total Liabilities</b>	<b>2,767</b>	<b>2,924</b>
Contingencies (See Note 11)		
Series A convertible preferred stock	142	142
Common stock	2	2
Additional paid-in capital	3,912	3,899
Retained earnings (deficit)	(2,308)	(2,313)
Accumulated other comprehensive loss	(423)	(398)
<b>Total Equity</b>	<b>1,183</b>	<b>1,190</b>
<b>Total Liabilities and Equity</b>	<b>\$ 4,092</b>	<b>\$ 4,256</b>
Shares of common stock issued and outstanding	212,672	212,074
Shares of series A convertible preferred stock issued and outstanding	120	120

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.



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## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

(in millions)	Nine Months Ended September 30,	
	2021	2020
<b>Cash Flows from Operating Activities:</b>		
Net income (loss)	\$ 12	\$ (107)
Adjustments required to reconcile net income (loss) to cash flows from operating activities:		
Depreciation and amortization	265	344
Contract inducement amortization	1	2
Deferred income taxes	(7)	(38)
(Gain) loss from investments	5	(3)
Amortization of debt financing costs	5	5
Loss on extinguishment of debt	2	—
Loss on divestitures and sales of fixed assets, net	1	5
Stock-based compensation	14	14
Allowance for doubtful accounts	(1)	1
Changes in operating assets and liabilities:		
Accounts receivable	(34)	(36)
Other current and long-term assets	(59)	(51)
Accounts payable and accrued compensation and benefits costs	5	(5)
Restructuring liabilities	—	3
Other current and long-term liabilities	(57)	(152)
Net change in income tax assets and liabilities	6	7
Net cash provided by (used in) operating activities	158	(11)
<b>Cash Flows from Investing Activities:</b>		
Cost of additions to land, buildings and equipment	(52)	(48)
Cost of additions to internal use software	(49)	(47)
Proceeds from divestitures	4	3
Net cash provided by (used in) investing activities	(97)	(92)
<b>Cash Flows from Financing Activities:</b>		
Proceeds from revolving credit facility and other loans	—	152
Payments on debt	(102)	(41)
Payment of contingent consideration related to acquisition	—	(4)
Premium on debt redemption	(2)	—
Taxes paid for settlement of stock-based compensation	(1)	(3)
Dividends paid on preferred stock	(7)	(5)
Net cash provided by (used in) financing activities	(112)	99
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(7)	(5)
Increase (decrease) in cash, cash equivalents and restricted cash	(58)	(9)
Cash, Cash Equivalents and Restricted Cash at Beginning of Period	458	505
<b>Cash, Cash Equivalents and Restricted Cash at End of period<sup>(1)</sup></b>	<b>\$ 400</b>	<b>\$ 496</b>

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(1) Includes \$6 million and \$8 million of restricted cash as of September 30, 2021 and 2020, respectively, that were included in Other current assets on their respective Condensed Consolidated Balance Sheets.

*The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.*

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### CONDUENT INCORPORATED CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (UNAUDITED)

Three Months Ended September 30, 2021

(in millions)	Common Stock	Additional Paid- in Capital	Retained Earnings (Deficit)	AOCL <sup>(1)</sup>	Shareholders' Equity
<b>Balance at June 30, 2021</b>	\$ 2	\$ 3,907	\$ (2,317)	\$ (407)	\$ 1,185
Dividends - preferred stock, \$20/share	—	—	(2)	—	(2)
Stock incentive plans, net	—	5	—	—	5
Comprehensive Income (Loss):					
Net Income (Loss)	—	—	11	—	11
Other comprehensive income (loss), net	—	—	—	(16)	(16)
<b>Total Comprehensive Income (Loss), Net</b>	—	—	11	(16)	(5)
<b>Balance at September 30, 2021</b>	\$ 2	\$ 3,912	\$ (2,308)	\$ (423)	\$ 1,183

Three Months Ended September 30, 2020

(in millions)	Common Stock	Additional Paid- in Capital	Retained Earnings (Deficit)	AOCL <sup>(1)</sup>	Shareholders' Equity
<b>Balance at June 30, 2020</b>	\$ 2	\$ 3,896	\$ (2,290)	\$ (433)	\$ 1,175
Dividends - preferred stock, \$20/share <sup>(2)</sup>	—	—	(2)	—	(2)
Stock incentive plans, net	—	5	—	—	5
Comprehensive Income (Loss):					
Net Income (Loss)	—	—	(7)	—	(7)
Other comprehensive income (loss), net	—	—	—	12	12
<b>Total Comprehensive Income (Loss), Net</b>	—	—	(7)	12	5
<b>Balance at September 30, 2020</b>	\$ 2	\$ 3,901	\$ (2,299)	\$ (421)	\$ 1,183

Nine Months Ended September 30, 2021

(in millions)	Common Stock	Additional Paid- in Capital	Retained Earnings (Deficit)	AOCL <sup>(1)</sup>	Shareholders' Equity
<b>Balance at December 31, 2020</b>	\$ 2	\$ 3,899	\$ (2,313)	\$ (398)	\$ 1,190
Dividends - preferred stock, \$60/share	—	—	(7)	—	(7)
Stock incentive plans, net	—	13	—	—	13
Comprehensive Income (Loss):					
Net Income (Loss)	—	—	12	—	12
Other comprehensive income (loss), net	—	—	—	(25)	(25)
<b>Total Comprehensive Income (Loss), Net</b>	—	—	12	(25)	(13)
<b>Balance at September 30, 2021</b>	\$ 2	\$ 3,912	\$ (2,308)	\$ (423)	\$ 1,183



Nine Months Ended September 30, 2020

<i>(in millions)</i>	Common Stock	Additional Paid- in Capital	Retained Earnings (Deficit)	AOCL <sup>(1)</sup>	Shareholders' Equity
<b>Balance at December 31, 2019</b>	2	3,890	(2,185)	(407)	1,300
Dividends - preferred stock, \$60/share <sup>(2)</sup>	—	—	(7)	—	(7)
Stock incentive plans, net	—	11	—	—	11
Comprehensive Income (Loss):					
Net Income (Loss)	—	—	(107)	—	(107)
Other comprehensive income (loss), net	—	—	—	(14)	(14)
<b>Total Comprehensive Income (Loss), Net</b>	<b>—</b>	<b>—</b>	<b>(107)</b>	<b>(14)</b>	<b>(121)</b>
<b>Balance at September 30, 2020</b>	<b>\$ 2</b>	<b>\$ 3,901</b>	<b>\$ (2,299)</b>	<b>\$ (421)</b>	<b>\$ 1,183</b>

(1) AOCL - Accumulated other comprehensive loss. Refer to Note 10 – Accumulated Other Comprehensive Loss for the components of AOCL.

(2) The preferred dividend for the third quarter of 2020 was accrued but unpaid as of September 30, 2020.

*The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.*

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### NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

#### Note 1 – Basis of Presentation

References herein to “we,” “us,” “our,” the “Company” and “Conduent” refer to Conduent Incorporated and its consolidated subsidiaries unless the context suggests otherwise.

#### Description of Business

As one of the largest business process services companies in the world, Conduent delivers mission-critical services and solutions on behalf of businesses and governments – creating exceptional outcomes for its clients and the millions of people who count on them. Through people, process, expertise in transaction-intensive processing and technology such as analytics and automation, Conduent's services and solutions create value by improving efficiencies, reducing costs and enabling revenue growth. A majority of Fortune 100 companies and over 500 government entities depend on Conduent every day to manage their business processes and essential interactions with their end-users. The Company's portfolio includes industry-focused solutions in attractive growth markets such as healthcare and transportation, as well as solutions that serve multiple industries such as transaction processing, customer care, human resource solutions and payment services.

#### Basis of Presentation

The unaudited interim Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) on a basis consistent with reporting interim financial information in accordance with instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. The year-end Condensed Consolidated Balance Sheet was derived from the audited Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020. Certain reclassifications have been made to prior year information to conform to current year presentation. Intercompany balances and transactions have been eliminated. In the opinion of management, all adjustments necessary for a fair statement of the financial position, results of operations and cash flows have been made. These adjustments consist of normal recurring items. The interim results of operations are not necessarily indicative of the results of the full year. These financial statements should be read in conjunction with the Company's Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

#### Use of Estimates

Preparation of financial statements in conformity with U.S. GAAP requires the Company to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. Actual results could differ materially from these estimates. On an ongoing basis, the Company evaluates its estimates, including those related to fair values of financial instruments, goodwill and intangible assets, income taxes and contingent liabilities, among others. The Company bases its estimates on assumptions, both historical and forward looking, that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

As of September 30, 2021, the impact of the COVID-19 pandemic, the mitigating impact of the rollout of a vaccine for it and fluctuating cases of new variants of the virus continue to unfold. As a result, many of the Company's estimates and assumptions continue to require increased judgment and carry a higher degree of variability and volatility. As events continue to evolve and additional information becomes available, the Company's estimates may change materially in the future.

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### Note 2 – Recent Accounting Pronouncements

The Company's significant accounting policies are described in Note 1–Basis of Presentation and Summary of Significant Accounting Policies in the Company's Annual Report on Form 10-K for the year ended December 31, 2020. Summarized below are the applicable accounting pronouncements adopted or to be adopted subsequent to December 31, 2020.

#### **New Accounting Standards Adopted**

**Income Taxes:** In December 2019, the Financial Accounting Standards Board (FASB) issued final guidance that simplified the accounting for income taxes by eliminating some exceptions to the general approach in Accounting Standards Codification (ASC) 740, Income Taxes. This final guidance was effective for fiscal years beginning January 1, 2021. The Company adopted the final income taxes guidance as of January 1, 2021. The adoption did not have any material impact on the Company's Condensed Consolidated Financial Statements.

#### **New Accounting Standards To Be Adopted**

**Reference Rate Reform:** In March 2020, the FASB issued updated guidance relating to the accounting for the discontinuation of the London Inter-bank Offered Rate (LIBOR), referred to as reference rate reform. This guidance provides optional practical expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. This guidance is applicable to contract modifications that replace a reference LIBOR rate affected by reference rate reform. The amendments may be applied through December 31, 2022. The Company is currently evaluating the impact of this guidance on its Condensed Consolidated Financial Statements.

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### Note 3 – Revenue

#### Disaggregation of Revenue

The following table provides information about disaggregated revenue by major service offering, the timing of revenue recognition and a reconciliation of the disaggregated revenue by reportable segment. Refer to Note 4 – Segment Reporting for additional information on the Company's reportable segments.

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Commercial Industries:</b>				
Customer experience management	\$ 152	\$ 149	\$ 459	\$ 474
Business operations solutions	139	140	418	426
Commercial healthcare solutions	109	106	329	322
Human resource and learning services	109	123	332	388
<b>Total Commercial Industries</b>	<b>509</b>	<b>518</b>	<b>1,538</b>	<b>1,610</b>
<b>Government Services:</b>				
Government healthcare solutions	143	153	432	459
Government services solutions	206	195	573	510
<b>Total Government Services</b>	<b>349</b>	<b>348</b>	<b>1,005</b>	<b>969</b>
<b>Transportation:</b>				
Roadway charging & management services	79	83	237	232
Transit solutions	60	53	194	181
Curbside management solutions	22	18	60	54
Public safety solutions	17	19	52	56
Commercial vehicles	2	2	6	6
<b>Total Transportation</b>	<b>180</b>	<b>175</b>	<b>549</b>	<b>529</b>
<b>Total Consolidated Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$ 3,092</b>	<b>\$ 3,108</b>
<b>Timing of Revenue Recognition:</b>				
Point in time	\$ 26	\$ 23	\$ 83	\$ 85
Over time	1,012	1,018	3,009	3,023
<b>Total Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$ 3,092</b>	<b>\$ 3,108</b>

#### Contract Balances

The Company receives payments from customers based upon contractual billing schedules. Accounts receivable are recorded when the right to consideration becomes unconditional. Contract assets are the Company's rights to consideration for services provided when the right is conditioned on something other than passage of time (for example, meeting a

milestone for the right to bill under the cost-to-cost measure of progress). Contract assets are transferred to Accounts receivable, net when the rights to consideration become unconditional. Unearned income includes payments received in advance of performance under the contract, which are realized when the associated revenue is recognized under the contract.

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The following table provides information about the balances of the Company's contract assets, unearned income and receivables from contracts with customers:

(in millions)

	September 30, 2021	December 31, 2020
<b>Contract Assets (Unearned Income)</b>		
Current contract assets	\$ 159	\$ 151
Long-term contract assets <sup>(1)</sup>	8	13
Current unearned income	(111)	(133)
Long-term unearned income <sup>(2)</sup>	(39)	(29)
<b>Net Contract Assets (Unearned Income)</b>	<b>\$ 17</b>	<b>\$ 2</b>
Accounts receivable, net	\$ 701	\$ 670

(1) Presented in Other long-term assets in the Condensed Consolidated Balance Sheets.

(2) Presented in Other long-term liabilities in the Condensed Consolidated Balance Sheets.

Revenues of \$11 million and \$99 million were recognized during the three and nine months ended September 30, 2021, respectively, related to the Company's unearned income at December 31, 2020. Revenues of \$20 million and \$84 million were recognized during the three and nine months ended September 30, 2020, respectively, related to the Company's unearned income at December 31, 2019. The Company had no material asset impairment charges related to contract assets for the three and nine months ended September 30, 2021 or 2020.

### Transaction Price Allocated to the Remaining Performance Obligations

Estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied or partially satisfied at September 30, 2021 was approximately \$1.3 billion. The Company expects to recognize approximately 76% of this revenue over the next two years and the remainder thereafter.

## Note 4 – Segment Reporting

The Company's reportable segments correspond to how it organizes and manages the business, as defined by the Company's Chief Executive Officer, who is also the Company's Chief Operating Decision Maker (CODM), and are aligned to the industries in which the Company's clients operate. The Company's segments involve the delivery of business process services and include service arrangements where it manages a customer's business activity or process.

The Company's financial performance is based on Segment Profit/(Loss) for its three reportable segments (Commercial Industries, Government Services and Transportation), Other and Unallocated Costs. The Company's CODM does not evaluate operating segments using discrete asset information.

**Commercial Industries:** The Commercial Industries segment provides business process services and customized solutions to clients in a variety of industries. Across the Commercial Industries segment, the Company operates on its clients' behalf to deliver mission-critical solutions and services to reduce costs, improve efficiencies and enable revenue growth for the Company's clients and their consumers and employees.

**Government Services:** The Government Services segment provides government-centric business process services to U.S. federal, state and local and foreign governments for public assistance program administration, transaction processing and payment services. The solutions in this segment help governments respond to changing rules for eligibility and increasing citizen expectations.



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**Transportation:** The Transportation segment provides systems and support, as well as revenue-generating services, to government clients. On behalf of government agencies and authorities in the transportation industry, the Company delivers mission-critical mobility and payment solutions that improve automation, interoperability and decision-making to streamline operations, increase revenue and reduce congestion while creating safer communities and seamless travel experiences for consumers.

Other includes the Company's Student Loan business, which the Company exited in the third quarter of 2018.

Unallocated Costs includes IT infrastructure costs that are shared by multiple reportable segments, enterprise application costs and certain corporate overhead expenses not directly attributable or allocated to the reportable segments.

Selected financial information for the Company's reportable segments was as follows:

(in millions)	Three Months Ended					Total
	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs	
September 30,						
2021						
Revenue	\$ 509	\$ 349	\$ 180	\$ —	\$ —	\$ 1,038
Segment profit (loss)	\$ 29	\$ 125	\$ 16	\$ —	\$ (94)	\$ 76

2020						
Revenue	\$ 518	\$ 348	\$ 175	\$ —	\$ —	\$ 1,041
Segment profit (loss)	\$ 32	\$ 122	\$ 26	\$ 6	\$ (98)	\$ 88

(in millions)	Nine Months Ended					Total
	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs	
September 30,						
2021						
Revenue	\$ 1,538	\$ 1,005	\$ 549	\$ —	\$ —	\$ 3,092
Segment profit (loss)	\$ 93	\$ 322	\$ 54	\$ —	\$ (259)	\$ 210

2020						
Revenue	\$ 1,610	\$ 969	\$ 529	\$ —	\$ —	\$ 3,108
Segment profit (loss)	\$ 99	\$ 282	\$ 56	\$ 9	\$ (258)	\$ 188

(in millions)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
<b>Segment Profit (Loss) Reconciliation to Pre-tax Income (Loss)</b>	2021	2020	2021	2020
Income (Loss) Before Income Taxes	\$ 19	\$ (13)	\$ 29	\$ (128)
<b>Reconciling items:</b>				
Amortization of acquired intangible assets	31	60	103	180
Restructuring and related costs	10	20	31	56
Interest expense	12	14	38	46
(Gain) loss on divestitures and transaction costs	—	8	1	14
Litigation costs	—	—	2	20
Loss on extinguishment of debt	—	—	2	—
Other (income) expenses, net	4	(1)	4	—
<b>Segment Pre-tax Income (Loss)</b>	<b>\$ 76</b>	<b>\$ 88</b>	<b>\$ 210</b>	<b>\$ 188</b>

Refer to Note 3 – Revenue for additional information on disaggregated revenues of the reportable segments.

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### Note 5 – Restructuring Programs and Related Costs

The Company engages in a series of restructuring programs related to downsizing its employee base, exiting certain activities, outsourcing certain internal functions and engaging in other actions designed to reduce its cost structure and improve productivity. The implementation of the Company's operational efficiency improvement initiatives has reduced the Company's real estate footprint across all geographies and segments resulting in lease right-of-use asset impairments and other related costs. Also included in Restructuring and related costs are incremental, non-recurring costs related to the consolidation of the Company's data centers, which totaled \$4 million and \$8 million for the three months ended September 30, 2021 and 2020, respectively, and \$19 million and \$16 million for the nine months ended September 30, 2021 and 2020, respectively. Management continues to evaluate the Company's businesses, and in the future, there may be additional provisions for new plan initiatives and/or changes in previously recorded estimates as payments are made, or actions are completed.

Costs associated with restructuring, including employee severance and lease termination costs, are generally recognized when it has been determined that a liability has been incurred, which is generally upon communication to the affected employees or exit from the leased facility. In those geographies where the Company has either a formal severance plan or a history of consistently providing severance benefits representing a substantive plan, it recognizes employee severance costs when they are both probable and reasonably estimable. Asset impairment costs related to the reduction of our real estate footprint include impairment of operating lease right-of-use (ROU) assets and associated leasehold improvements.

A summary of the Company's restructuring program activity during the nine months ended September 30, 2021 and 2020 is as follows:

(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments	Total
<b>Accrued Balance at December 31, 2020</b>	\$ 3	\$ 3	\$ —	\$ 6
Provision	2	23	7	32
Changes in estimates	—	(4)	—	(4)
Total Net Current Period Charges <sup>(1)</sup>	2	19	7	28
Charges against reserve and currency	(4)	(21)	(7)	(32)
<b>Accrued Balance at September 30, 2021</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ —</b>	<b>\$ 2</b>
(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments	Total
<b>Accrued Balance at December 31, 2019</b>	\$ 15	\$ 6	\$ —	\$ 21
Provision	13	19	15	47
Changes in estimates	1	2	—	3
Total Net Current Period Charges <sup>(1)</sup>	14	21	15	50
Charges against reserve and currency	(22)	(24)	(15)	(61)
<b>Accrued Balance at September 30, 2020</b>	<b>\$ 7</b>	<b>\$ 3</b>	<b>\$ —</b>	<b>\$ 10</b>

(1) Represents amounts recognized within the Consolidated Statements of Income (Loss) for the years shown.

In addition, the Company recorded professional support costs associated with the implementation of certain strategic transformation programs of \$1 million and \$2 million for the three months ended September 30, 2021 and 2020, respectively, and \$3 million and \$6 million for the nine months ended September 30, 2021 and 2020, respectively.

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The following table summarizes the total amount of costs incurred in connection with these restructuring programs by reportable and non-reportable segment:

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Commercial Industries	\$ 1	\$ 4	\$ 3	\$ 11
Government Services	—	—	—	1
Transportation	—	(1)	—	2
Unallocated Costs <sup>(1)</sup>	8	15	25	36
<b>Total Net Restructuring Charges</b>	<b>\$ 9</b>	<b>\$ 18</b>	<b>\$ 28</b>	<b>\$ 50</b>

(1) Represents costs related to the consolidation of the Company's data centers, operating lease ROU assets impairment, termination and other costs not allocated to the segments.

## Note 6 – Debt

Long-term debt was as follows:

(in millions)	September 30, 2021	December 31, 2020
Term loan A due December 2022	\$ 585	\$ 654
Term loan B due December 2023	810	816
Senior notes due 2024	—	34
Finance lease obligations	18	20
Other loans	5	4
<b>Principal debt balance</b>	<b>1,418</b>	<b>1,528</b>
Debt issuance costs and unamortized discounts	(13)	(18)
Less: current maturities	(21)	(90)
<b>Total Long-term Debt</b>	<b>\$ 1,384</b>	<b>\$ 1,420</b>

As of September 30, 2021, the Company had no outstanding borrowings under its \$750 million Senior Revolving Credit Facility in effect as of September 30, 2021 (Prior Revolver). However, the Company has utilized \$10 million of the Prior Revolver to issue letters of credit. The net Prior Revolver available to be drawn upon as of September 30, 2021 was \$740 million.

On May 1, 2021, the Company redeemed all the previously outstanding \$34 million 10.50% Senior Notes due 2024 and incurred \$2 million of loss on extinguishment of debt.

On October 15, 2021, the Company closed on a debt refinancing and extended its maturity profile. As described in Note 17 - Subsequent Event, the Term Loan A due 2022 and the Term Loan B due 2023 (collectively, the 2016 Credit Facilities) were repaid and the Prior Revolver was terminated. Under the applicable accounting rules, since the 2016 Credit Facilities were refinanced on a long-term basis before the issuance of these Condensed Consolidated Financial Statements, the

Company has classified a portion of the current maturities related to the 2016 Credit Facilities to long-term debt as of September 30, 2021.

At December 31, 2020, the Company was in compliance with all debt covenants related to the borrowings in the table above. As a result of the October 2021 refinancing, the Company's financial covenants have been waived until March 31, 2022.

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### Note 7 – Financial Instruments

The Company is a global company that is exposed to foreign currency exchange rate fluctuations in the normal course of its business. As a part of the Company's foreign exchange risk management strategy, the Company uses derivative instruments, primarily forward contracts, to hedge the funding of foreign entities which have a non-dollar functional currency, thereby reducing volatility of earnings or protecting fair values of assets and liabilities.

At September 30, 2021 and December 31, 2020, the Company had outstanding forward exchange contracts with gross notional values of \$147 million and \$180 million, respectively. At September 30, 2021, approximately 72% of these contracts mature within three months, 11% in three to six months, 13% in six to twelve months and 4% in greater than twelve months. Most of these foreign currency derivative contracts are designated as cash flow hedges and did not have a material impact on the Company's balance sheet, income statement or cash flows for the periods presented.

Refer to Note 8 – Fair Value of Financial Assets and Liabilities for additional information regarding the fair value of the Company's foreign exchange forward contracts.

### Note 8 – Fair Value of Financial Assets and Liabilities

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. U.S. GAAP established a hierarchy framework to classify the fair value based on the observability of significant inputs to the measurement. The levels of the fair value hierarchy are as follows:

Level 1: Fair value is determined using an unadjusted quoted price in an active market for identical assets or liabilities.

Level 2: Fair value is estimated using inputs other than quoted prices included within Level 1 that are observable, either directly or indirectly.

Level 3: Fair value is estimated using unobservable inputs that are significant to the fair value of the assets or liabilities.

### Summary of Financial Assets and Liabilities Accounted for at Fair Value on a Recurring Basis

The following table represents assets and liabilities measured at fair value on a recurring basis. The basis for the measurement at fair value in all cases was Level 2.

(in millions)	September 30, 2021	December 31, 2020
<b>Assets:</b>		
Foreign exchange contract - forward	\$ 1	\$ 2
<b>Total Assets</b>	<b>\$ 1</b>	<b>\$ 2</b>
<b>Liabilities:</b>		
Foreign exchange contracts - forward	\$ 2	\$ —
<b>Total Liabilities</b>	<b>\$ 2</b>	<b>\$ —</b>

### Summary of Other Financial Assets and Liabilities

The estimated fair values of other financial assets and liabilities were as follows:

(in millions)	September 30, 2021		December 31, 2020	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
<b>Liabilities:</b>				
Long-term debt	\$ 1,384	\$ 1,372	\$ 1,420	\$ 1,378

The fair value amounts for Cash and cash equivalents, Restricted cash, Accounts receivable, net and Short-term debt approximate carrying amounts due to the short-term maturities of these instruments.

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The fair value of Long-term debt was estimated using quoted market prices for identical or similar instruments (Level 2 inputs).

### Note 9 – Employee Benefit Plans

The Company has post-retirement savings and investment plans in several countries, including the U.S., U.K. and Canada. In many instances, employees participating in defined benefit pension plans that have been amended to freeze future service accruals were transitioned to an enhanced defined contribution plan. In these plans, employees are permitted to contribute a portion of their salaries and bonuses to the plans. Historically, the Company matched a portion of employee contributions. Beginning in 2019, the Company suspended its match to the 401(k) plan for all U.S. salaried employees and extended the suspension to all U.S. hourly employees in the second quarter of 2020. However, the Company match was reinstated for all U.S. employees in November of 2020.

The Company recognized an expense related to its defined contribution plans of \$6 million and \$1 million for the three months ended September 30, 2021 and 2020, respectively. The Company recognized an expense related to its defined contribution plans of \$16 million and \$2 million for the nine months ended September 30, 2021 and 2020, respectively. The balance sheet and income statement impacts of any remaining defined benefit plans are immaterial for all periods presented in these Consolidated Condensed Financial Statements.

### Note 10 – Accumulated Other Comprehensive Loss (AOCL)

Below are the balances and changes in AOCL<sup>(1)</sup>:

(in millions)	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Benefit Pension Items	Total
<b>Balance at December 31, 2020</b>	\$ (400)	\$ 3	\$ (1)	\$ (398)
Other comprehensive income (loss)	(23)	(1)	(1)	(25)
<b>Balance at September 30, 2021</b>	<u>\$ (423)</u>	<u>\$ 2</u>	<u>\$ (2)</u>	<u>\$ (423)</u>

  

(in millions)	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Benefit Pension Items	Total
<b>Balance at December 31, 2019</b>	\$ (408)	\$ 3	\$ (2)	\$ (407)
Other comprehensive income (loss)	(15)	—	1	(14)
<b>Balance at September 30, 2020</b>	<u>\$ (423)</u>	<u>\$ 3</u>	<u>\$ (1)</u>	<u>\$ (421)</u>

(1) All amounts are net of tax. Tax effects were immaterial.

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### Note 11 – Contingencies and Litigation

As more fully discussed below, the Company is involved in a variety of claims, lawsuits, investigations and proceedings concerning a variety of matters, including: governmental entity contracting, servicing and procurement law; intellectual property law; employment law; commercial and contracts law; the Employee Retirement Income Security Act (ERISA); and other laws and regulations. The Company determines whether an estimated loss from a contingency should be accrued by assessing whether a loss is deemed probable and can be reasonably estimated. The Company assesses its potential liability by analyzing its litigation and regulatory matters using available information. The Company develops its view on estimated losses in consultation with outside counsel handling its defense in these matters, which involves an analysis of potential results, assuming a combination of litigation and settlement strategies. Should developments in any of these matters cause a change in the Company's determination as to an unfavorable outcome and result in the need to recognize a material accrual, or should any of these matters result in a final adverse judgment or be settled for significant amounts in excess of any accrual for such matter or matters, this could have a material adverse effect on the Company's results of operations, cash flows and financial position in the period or periods in which such change in determination, judgment or settlement occurs. The Company believes it has recorded adequate provisions for any such matters as of September 30, 2021. Litigation is inherently unpredictable, and it is not possible to predict the ultimate outcome of these matters and such outcome in any such matters could be in excess of any amounts accrued and could be material to the Company's results of operations, cash flows or financial position in any reporting period.

Additionally, guarantees, indemnifications and claims arise during the ordinary course of business from relationships with suppliers, customers and non-consolidated affiliates when the Company undertakes an obligation to guarantee the performance of others if specified triggering events occur. Nonperformance under a contract could trigger an obligation of the Company. These potential claims include actions based upon alleged exposures to products, real estate, intellectual property such as patents, environmental matters and other indemnifications. The ultimate effect on future financial results is not subject to reasonable estimation because considerable uncertainty exists as to the outcome of these claims. However, while the ultimate liabilities resulting from such claims may be significant to results of operations in the period recognized, management does not anticipate they will have a material adverse effect on the Company's Consolidated Financial position or liquidity. As of September 30, 2021, the Company had accrued its estimate of liability incurred under its indemnification arrangements and guarantees.

#### Litigation Against the Company

[Employees' Retirement System of the Puerto Rico Electric Power Authority et al v. Conduent Inc. et al.](#): On March 8, 2019, a putative class action lawsuit alleging violations of certain federal securities laws in connection with our statements and alleged omissions regarding our financial guidance and business and operations was filed against us, our former Chief Executive Officer, and our former Chief Financial Officer in the United States District Court for the District of New Jersey. The complaint seeks certification of a class of all persons who purchased or otherwise acquired our securities from February 21, 2018 through November 6, 2018, and also seeks unspecified monetary damages, costs, and attorneys' fees. We moved to dismiss the class action complaint in its entirety. In June 2020, the court denied the motion to dismiss and allowed the claims to proceed. We intend to defend the litigation vigorously. The Company maintains insurance that may cover any costs arising out of this litigation up to the insurance limits, and subject to meeting certain deductibles and to other terms and conditions thereof. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.



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**[Skyview Capital LLC and Continuum Global Solutions, LLC v. Conduent Business Services, LLC:](#)** On February 3, 2020, plaintiffs filed a lawsuit in the Superior Court of New York County, New York. The lawsuit relates to the sale of a portion of Conduent Business Service, LLC's (CBS) select standalone customer care call center business to plaintiffs, which sale closed in February 2019. Under the terms of the sale agreement, CBS received approximately \$23 million of notes from plaintiffs (Notes). The lawsuit alleges various causes of action in connection with the acquisition, including: indemnification for breach of representation and warranty; indemnification for breach of contract; and fraud. Plaintiffs allege that their obligation to mitigate damages and their contractual right of set-off permits them to withhold and deduct from any amounts that are owed to CBS under the Notes, and plaintiffs seek a judgement that they have no obligation to pay the Notes. On August 20, 2020, Conduent filed a counterclaim against Skyview LLC (Skyview) seeking the outstanding balance on the Notes, the amounts owed for the Jamaica deferred closing, and other transition services agreement and late rent payment obligations. Conduent also moved to dismiss Skyview's claims in 2020. In May 2021, the court denied the motion and allowed the claims to proceed. Conduent denies all of the plaintiffs' allegations, believes that it has strong defenses to all of plaintiffs' claims and it intends to defend the litigation vigorously. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

**[Dennis Nasrawi v. Buck Consultants et al.:](#)** On October 8, 2009, plaintiffs filed a lawsuit in the Superior Court of California, Stanislaus County, and on November 24, 2009, the case was removed to the U.S. Court for the Eastern District of California, Fresno Division. Plaintiffs allege actuarial negligence against Buck Consultants, LLC (Buck), which was a wholly-owned subsidiary of Conduent, for the use of faulty actuarial assumptions in connection with the 2007 actuarial valuation for the Stanislaus County Employees Retirement Association (StanCERA). Plaintiffs allege that the employer contribution rate adopted by StanCERA based on Buck's valuation was insufficient to fund the benefits promised by the County. On July 13, 2012, the Court entered its ruling that the plaintiffs lacked standing to sue in a representative capacity on behalf of all plan participants. The Court also ruled that plaintiffs had adequately pleaded their claim that Buck allegedly aided and abetted StanCERA in breaching its fiduciary duty. Plaintiffs then filed their Fifth Amended Complaint and added StanCERA to the litigation. Buck and StanCERA filed demurrers to the amended complaint. On September 13, 2012, the Court sustained both demurrers with prejudice, completely dismissing the matter and barring plaintiffs from refiling their claims. Plaintiffs appealed, and ultimately the California Court of Appeals (Sixth District) reversed the trial court's ruling and remanded the case back to the trial court as to Buck only, and only with respect to plaintiff's claim of aiding and abetting StanCERA in breaching its fiduciary duty. This case has been stayed pending the outcome of parallel litigation the plaintiffs are pursuing against StanCERA. The parallel litigation was tried before the bench in June 2018, and on January 24, 2019, the court found in favor of StanCERA, holding that it had not breached its fiduciary duty to plaintiffs. On April 26, 2019, plaintiffs in the parallel litigation filed an appeal. Nasrawi remains stayed until the parallel litigation is finally concluded. Absent the court finding that StanCERA breached its fiduciary duty, plaintiffs' claim against Buck for aiding and abetting said breach would not appear viable. Buck will continue to aggressively defend these lawsuits. In August 2018, Conduent sold Buck; however, the Company retained this liability after the sale. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

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**[Conduent Business Services, LLC v. Cognizant Business Services Corporation](#)**: On April 12, 2017, CBS filed a lawsuit against Cognizant Business Services Corporation (Cognizant) in the Supreme Court of New York County, New York. The lawsuit relates to the Amended and Restated Master Outsourcing Services Agreement effective as of October 24, 2012, and the service delivery contracts and work orders thereunder, between CBS and Cognizant, as amended and supplemented (Contract). The Contract contains certain minimum purchase obligations by CBS through the date of expiration. The lawsuit alleges that Cognizant committed multiple breaches of the Contract, including Cognizant's failure to properly perform its obligations as subcontractor to CBS under CBS's contract with the New York Department of Health to provide Medicaid Management Information Systems. In the lawsuit, CBS seeks damages in excess of \$150 million. During the first quarter of 2018, CBS provided notice to Cognizant that it was terminating the Contract for cause and recorded in the same period certain charges associated with the termination. CBS also alleges that it terminated the Contract for cause, because, among other things, Cognizant violated the Foreign Corrupt Practices Act. In its answer, Cognizant asserted two counterclaims for breach of contract seeking recovery of damages in excess of \$47 million, which includes amounts alleged not paid to Cognizant under the Contract and an alleged \$25 million termination fee. Cognizant's second amended counterclaim increased Cognizant's damages to \$89 million. CBS will continue to vigorously defend itself against the counterclaims but the Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

## **Other Matters**

Since 2014, Xerox Education Services, Inc. (XES) has cooperated with several federal and state agencies regarding a variety of matters, including XES' self-disclosure to the U.S. Department of Education (Department) and the Consumer Financial Protection Bureau (CFPB) that some third-party student loans under outsourcing arrangements for various financial institutions required adjustments. With the exception of an inquiry the Illinois Attorney General's Office recently commenced, the Company has resolved the investigations the CFPB and several state agencies commenced and continues to work with the Department and the U.S. Department of Justice to resolve all outstanding issues, including a number of operational projects that XES discovered and disclosed since 2014. The Company cannot provide assurance that the CFPB, another regulator, a financial institution on behalf of which the Company serviced third-party student loans, or another party will not ultimately commence a legal action against XES in which fines, penalties or other liabilities are sought from XES. Nor is the Company able to predict the likely outcome of these matters, should any such matter be commenced, or reasonably provide an estimate or range of estimates of any loss in excess of currently recorded reserves. The Company could, in future periods, incur judgments or enter into settlements to resolve these potential matters for amounts in excess of current reserves and there could be a material adverse effect on the Company's results of operations, cash flows and financial position in the period in which such change in judgment or settlement occurs.

## **Other Contingencies**

Certain contracts, primarily in the Company's Government Services and Transportation segments, require the Company to provide a surety bond or a letter of credit as a guarantee of performance. As of September 30, 2021, the Company had \$553 million of outstanding surety bonds used to secure its performance of contractual obligations with its clients and \$94 million of outstanding letters of credit issued to secure the Company's performance of contractual obligations to its clients as well as other corporate obligations. In general, the Company would only be liable for the amount of these guarantees in the event of default in the Company's performance of its obligations under each contract. The Company believes it has sufficient capacity in the surety markets and liquidity from its cash flow and its various credit arrangements to allow it to respond to future requests for proposals that require such credit support.



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### Note 12 – Preferred Stock

#### Series A Preferred Stock

In December 2016, the Company issued 120,000 shares of Series A convertible perpetual preferred stock with an aggregate liquidation preference of \$120 million and an initial fair value of \$142 million. The convertible preferred stock earns quarterly cash dividends at a rate of 8% per year (\$9.6 million per year). Each share of convertible preferred stock is convertible at any time, at the option of the holder, into 44.9438 shares of common stock for a total of 5,393,000 shares (reflecting an initial conversion price of approximately \$22.25 per share of common stock), subject to customary anti-dilution adjustments.

### Note 13 – Earnings (Loss) per Share

The Company did not declare any common stock dividends in the periods presented.

The following table sets forth the computation of basic and diluted earnings (loss) per share of common stock:

(in millions, except per share data in whole dollars and shares in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net Income (Loss)	\$ 11	\$ (7)	\$ 12	\$ (107)
Dividend - Preferred Stock	(2)	(2)	(7)	(7)
Adjusted Net Income (Loss) Available to Common Shareholders	\$ 9	\$ (9)	\$ 5	\$ (114)
Weighted Average Common Shares Outstanding - Basic	212,633	209,244	212,438	209,958
Common Shares Issuable With Respect To:				
Restricted Stock And Performance Units / Shares	7,184	—	7,239	—
Weighted Average Common Shares Outstanding - Diluted	219,817	209,244	219,677	209,958
<b>Net Earnings (Loss) per Share:</b>				
Basic	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
Diluted	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)

The following securities were not included in the computation of diluted earnings per share as they were either contingently issuable shares or shares that if included would have been anti-dilutive (shares in thousands):

Restricted stock and performance shares/units	3,606	16,196	2,229	16,196
Convertible preferred stock	5,393	5,393	5,393	5,393
<b>Total Anti-Dilutive and Contingently Issuable Securities</b>	<b>8,999</b>	<b>21,589</b>	<b>7,622</b>	<b>21,589</b>

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### Note 14 – Supplementary Financial Information

The components of Other assets and Other liabilities were as follows:

(in millions)	September 30, 2021	December 31, 2020
<b>Other Current Assets</b>		
Prepaid expenses	\$ 96	\$ 73
Income taxes receivable	42	48
Value-added tax (VAT) receivable	16	21
Restricted cash	6	8
Current portion of capitalized cloud computing implementation costs, net	10	8
Other	87	148
<b>Total Other Current Assets</b>	<b>\$ 257</b>	<b>\$ 306</b>
<b>Other Current Liabilities</b>		
Accrued liabilities	\$ 232	\$ 229
Litigation related accruals	64	73
Current operating lease liabilities	71	81
Restructuring liabilities	2	1
Income tax payable	18	16
Other taxes payable	14	16
Other	33	34
<b>Total Other Current Liabilities</b>	<b>\$ 434</b>	<b>\$ 450</b>
<b>Other Long-term Assets</b>		
Internal use software, net	\$ 177	\$ 163
Deferred contract costs, net	73	76
Product software, net	90	72
Cloud computing implementation costs, net	31	33
Other	104	69
<b>Total Other Long-term Assets</b>	<b>\$ 475</b>	<b>\$ 413</b>
<b>Other Long-term Liabilities</b>		
Deferred payroll tax related to the CARES Act <sup>(1)</sup>	\$ 24	\$ 24
Income tax liabilities	16	15
Unearned income	39	29
Restructuring liabilities	—	5
Other	35	35
<b>Total Other Long-term Liabilities</b>	<b>\$ 114</b>	<b>\$ 108</b>



(1) *The CARES Act allowed for deferred payment of the employer-paid portion of social security taxes through the end of 2020, with 50% due on December 31, 2021 and the remainder due on December 31, 2022. The current portion of this liability is included in Accrued compensation and benefits costs.*

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### Note 15 – Related Party Transactions

In the normal course of business, the Company provides services to, and purchases from, certain related parties with the same shareholders. The services provided to these entities included those related to human resources, end-user support and other services and solutions. The purchases from these entities included office equipment and related services and supplies. In addition, we have a receivable related to certain income tax matters with our former parent company, Xerox Corporation. Revenue and purchases from these entities were included in Revenue and Costs of services / Selling, General and administrative, respectively, on the Company's Condensed Consolidated Statements of Income (Loss).

Transactions with related parties were as follows:

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenue from related parties	\$ 3	\$ 6	\$ 12	\$ 19
Purchases from related parties	\$ 6	\$ 8	\$ 22	\$ 22

The Company's receivable and payable balances with related party entities were not material as of September 30, 2021 and December 31, 2020.

### Note 16 – Goodwill

The following table presents the changes in the carrying amount of goodwill, by reportable segment:

(in millions)	Commercial	Government	Transportation	Total
	Industries	Services		
<b>Balance at December 31, 2020</b>	\$ 837	\$ 623	\$ 68	\$ 1,528
Foreign currency translation	(11)	(4)	(7)	(22)
<b>Balance at September 30, 2021</b>	\$ 826	\$ 619	\$ 61	\$ 1,506
Gross goodwill	\$ 2,379	\$ 1,373	\$ 641	\$ 4,393
Accumulated impairment	(1,553)	(754)	(580)	(2,887)
<b>Balance at September 30, 2021</b>	\$ 826	\$ 619	\$ 61	\$ 1,506

In the first, second and third quarters of 2021, the Company performed its ongoing assessment to consider whether events or circumstances had occurred that could more likely than not reduce the fair value of a reporting unit below its carrying value. After evaluating and weighing all relevant events and circumstances, the Company concluded that it is not more likely than not that the fair values of any of its reporting units were less than their carrying values. Consequently, the Company determined that it was not necessary to perform an interim impairment test for any of its reporting units.

To the extent the COVID-19 pandemic continues to disrupt the economic environment, such as a decline in the performance of the reporting units or loss of a significant contract or multiple significant contracts, the fair value of one or more of the reporting units could fall below their carrying value, resulting in a goodwill impairment charge.



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### Note 17 – Subsequent Event

On October 15, 2021, the Company closed on a debt refinancing and extended its maturity profile. The debt refinancing transactions were as follows:

(in millions)	Amount	Interest Rate
Term Loan A due 2026	\$ 265	LIBOR + 1.75 to 2.75%
Term Loan B due 2028	515	LIBOR * + 4.25%
Secured Notes due 2029	520	6.00 %
Total new debt excluding revolving credit facility	\$ 1,300	
Revolving Credit Facility maturing 2026	\$ 550	LIBOR + 1.75 to 2.75%

—  
\* *subject to a floor of 50 basis points*

Upon closing the debt refinancing, \$100 million was borrowed under the new Revolving Credit Facility (Revolver). The net proceeds of the Term Loan A due 2026, Term Loan B due 2028, Secured Notes due 2029 and \$100 million of borrowing under the Revolver were used to repay borrowings under the 2016 Credit Facilities that were outstanding on October 15, 2021. The amounts repaid were \$587 million for Term Loan A due 2022 and \$810 million for Term Loan B due 2023. As a part of the transactions, the Prior Revolver was terminated.

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## ITEM 2 — MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management’s Discussion and Analysis (MD&A) is intended to help the reader understand the results of operations and financial condition of Conduent Incorporated and its consolidated subsidiaries. MD&A is provided as a supplement to, and should be read in conjunction with, our Condensed Consolidated Financial Statements and the accompanying Notes.

### Overview

We are a leading provider of business process services with expertise in transaction-intensive processing, analytics and automation. We serve as a trusted business partner in both the front office and back office, enabling personalized, seamless interactions on a massive scale that improve end-user experience.

Headquartered in Florham Park, New Jersey, we have a team of approximately 61,000 associates as of September 30, 2021, servicing customers from service centers in 24 countries.

Our reportable segments correspond to how we organize and manage the business and are aligned to the industries in which our clients operate.

We organize and manage our businesses through three reportable segments.

- **Commercial Industries** – Our Commercial Industries segment provides business process services and customized solutions to clients in a variety of industries. Across the Commercial Industries segment, we operate on our clients’ behalf to deliver mission-critical solutions and services to reduce costs, improve efficiencies and enable revenue growth for our clients and their consumers and employees.
- **Government Services** – Our Government Services segment provides government-centric business process services to U.S. federal, state and local and foreign governments for public assistance, health services, program administration, transaction processing and payment services. Our solutions in this segment help governments respond to changing rules for eligibility and increasing citizen expectations.
- **Transportation** – Our Transportation segment provides systems and support, as well as revenue-generating services, to government clients. On behalf of government agencies and authorities in the transportation industry, we deliver mission-critical mobility and payment solutions that improve automation, interoperability and decision-making to streamline operations, increase revenue and reduce congestion while creating safer communities and seamless travel experiences for consumers.

### Executive Summary

We continue to transform our business through an intense focus on growth, quality, and efficiency – utilizing a programmatic and project management approach. Beginning in the first quarter of 2020 and through the third quarter of 2021, we have expanded the focus of our project portfolio to include both efficiency and growth initiatives, aimed to position the company to pivot to revenue growth and margin expansion over time.

We intend to drive portfolio focus, operating discipline, sales and delivery excellence and innovation, complemented by tightly aligned investments to achieve this mission and purpose. Our strategy is designed to deliver value by delivering

profitable growth, expanding operating margins and deploying a disciplined capital allocation strategy. During the three and nine months ended September 30, 2021, our strategy is showing results, including the following:

- Revenue of \$1,038 million and \$3,092 million for the three and nine months ended September 30, 2021, respectively, was substantially unchanged.
- Positive net income of \$11 million and \$12 million for the three and nine months ended September 30, 2021, respectively, as compared to net loss of \$7 million and \$107 million for the same periods in the prior year.
- Net Annual Recurring Revenue (ARR) activity metric (as defined in "Metrics") of \$132 million, a 25% improvement over the second quarter of 2021. This metric continues to be positive for the fourth consecutive quarter.

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- New business signings results:
  - New business total contract value (TCV) signings of \$344 million and \$1,475 million for the three and nine months ended September 30, 2021, respectively, representing a decrease of 26% and an increase of 4%, respectively, compared to the same periods of the prior year.
  - Annual recurring revenue signings of \$87 million and \$297 million for the three and nine months ended September 30, 2021, respectively, representing a decrease of 9% and an increase of 15%, respectively, compared to the same periods of the prior year.
- The Company has shown year-over-year operational progress, including an improvement to technology platform uptime, improvements in associate satisfaction survey results and increases in performance incentives from customers.
- Subsequent to September 30, 2021, the Company closed on a debt refinancing and extended its maturity profile.

## **COVID-19 Pandemic**

Throughout the COVID-19 pandemic, we have continued to provide critical and best-in-class services to our customers and their end-users, while ensuring the health and safety of our greatest assets - our associates. To address the potential impact to our business over the near-term, our Business Continuity team established a proactive plan in the first quarter of 2020 that has continued into the third quarter of 2021, which includes:

- Supporting our associates with a number of specific initiatives, including making improvements to our policies to extend short-term disability, providing extra supplemental sick leave coverage and introducing a hardship leave policy.
- At the end of 2020, approximately 75% of our workforce had been shifted to work-from-home. In 2021, we have started a slow and measured approach to bringing associates back to Conduent offices, as appropriate. This is an ongoing phased process and is based on the specific COVID-19 conditions in certain geographies, as well as business requirements.
- Increased sanitation and social distancing for required on-site associates.

As the world increasingly becomes vaccinated, we will evolve our approach to various initiatives or take additional actions to meet the needs of our employees, customers and their end-users and the Company to continue to provide our mission-critical services and solutions.

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### Financial Review of Operations

(\$ in millions)	Three Months Ended		2021 vs. 2020	
	September 30,		\$ Change	% Change
	2021	2020		
<b>Revenue</b>	\$ 1,038	\$ 1,041	\$ (3)	— %
<b>Operating Costs and Expenses</b>				
Cost of services (excluding depreciation and amortization)	776	779	(3)	— %
Selling, general and administrative (excluding depreciation and amortization)	131	122	9	7 %
Research and development (excluding depreciation and amortization)	2	—	2	n/m
Depreciation and amortization	84	112	(28)	(25)%
Restructuring and related costs	10	20	(10)	(50)%
Interest expense	12	14	(2)	(14)%
(Gain) loss on divestitures and transaction costs	—	8	(8)	(100)%
Litigation costs	—	—	—	n/m
Loss on extinguishment of debt	—	—	—	n/m
Other (income) expenses, net	4	(1)	5	n/m
<b>Total Operating Costs and Expenses</b>	<b>1,019</b>	<b>1,054</b>	<b>(35)</b>	
<b>Income (Loss) Before Income Taxes</b>	<b>19</b>	<b>(13)</b>	<b>32</b>	
Income tax expense (benefit)	8	(6)	14	
<b>Net Income (Loss)</b>	<b>\$ 11</b>	<b>\$ (7)</b>	<b>\$ 18</b>	



(\$ in millions)	Nine Months Ended		2021 vs. 2020	
	September 30,		\$ Change	% Change
	2021	2020		
<b>Revenue</b>	\$ 3,092	\$ 3,108	\$ (16)	(1)%
<b>Operating Costs and Expenses</b>				
Cost of services (excluding depreciation and amortization)	2,335	2,406	(71)	(3)%
Selling, general and administrative (excluding depreciation and amortization)	382	349	33	9%
Research and development (excluding depreciation and amortization)	3	1	2	200%
Depreciation and amortization	265	344	(79)	(23)%
Restructuring and related costs	31	56	(25)	(45)%
Interest expense	38	46	(8)	(17)%
(Gain) loss on divestitures and transaction costs	1	14	(13)	(93)%
Litigation costs	2	20	(18)	(90)%
Loss on extinguishment of debt	2	—	2	n/m
Other (income) expenses, net	4	—	4	n/m
<b>Total Operating Costs and Expenses</b>	<b>3,063</b>	<b>3,236</b>	<b>(173)</b>	
<b>Income (Loss) Before Income Taxes</b>	<b>29</b>	<b>(128)</b>	<b>157</b>	
Income tax expense (benefit)	17	(21)	38	
<b>Net Income (Loss)</b>	<b>\$ 12</b>	<b>\$ (107)</b>	<b>\$ 119</b>	

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### **Revenue**

Revenue for the three months ended September 30, 2021 was substantially unchanged, compared to the prior year period, primarily due to lesser impacts of the COVID-19 pandemic across our Transportation and Commercial Industries segments, increased volumes in our Government Services segment, primarily increased payments activity because of Federal stimulus, and the ramp of new business. These increases were offset by lost business from prior years.

Revenue for the nine months ended September 30, 2021 decreased by less than 1%, compared to the prior year period, primarily due to lost business from prior years and the effect of the COVID-19 pandemic across our Commercial Industries and our Transportation segments, which had only a minimal impact on the first quarter of 2020. These unfavorable impacts were largely offset by increased volumes in our Government Services segment, primarily increased payments activity because of Federal stimulus, and the ramp of new business.

### **Cost of Services (excluding depreciation and amortization)**

Cost of services for the three months ended September 30, 2021 was substantially unchanged compared to the prior year period, which tracked to the small change in Revenue.

Cost of services for the nine months ended September 30, 2021 decreased slightly, compared to the prior year period, driven by lost business from prior years as well as increased operational efficiency, which led to reductions in information technology, labor and real estate costs. Also contributing to the decline were lower costs to support volume loss resulting from the effect of the COVID-19 pandemic.

### **Selling, General and Administrative (SG&A) (excluding depreciation and amortization)**

SG&A for the three and nine months ended September 30, 2021 increased, compared to the prior year periods, driven by an increase in certain employee-related compensation costs and growth in the sales organization and higher recruiting expenses, partially offset by lower medical benefit costs in the third quarter of 2021.

### **Depreciation and Amortization**

Depreciation and amortization for the three and nine months ended September 30, 2021 decreased, compared to the prior year periods, primarily due to a portion of certain customer relationship intangible assets being fully amortized in the first quarter of 2021.

### **Restructuring and Related Costs**

We engage in a series of restructuring programs related to optimizing our employee base, reducing our real estate footprint, exiting certain activities, outsourcing certain internal functions, consolidating our data centers and engaging in other actions designed to reduce our cost structure and improve productivity. The following are the components of our Restructuring and related costs:

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Severance and related costs	\$ —	\$ 4	\$ 2	\$ 14
Data center consolidation	4	8	19	16
Termination, asset impairment and other costs	5	6	7	20
<b>Total net current period charges</b>	9	18	28	50
Consulting and other costs <sup>(1)</sup>	1	2	3	6
<b>Restructuring and related costs</b>	\$ 10	\$ 20	\$ 31	\$ 56

(1) Represents professional support costs associated with certain strategic transformation programs.

Refer to Note 5 – Restructuring Programs and Related Costs to the Condensed Consolidated Financial Statements for additional information regarding our restructuring programs.

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### **Interest Expense**

Interest expense represents interest on long-term debt and the amortization of debt issuance costs. The decreases in Interest expense for the three and nine months ended September 30, 2021, compared to the prior year periods, was driven primarily by lower interest rates, a lower Term Loan A due 2023 principal balance and the May 1, 2021 repayment of the previously outstanding \$34 million Senior Notes due 2024. Additionally, the three and nine months ended September 30, 2020 included interest expense attributable to the \$150 million drawdown on our Senior Revolving Credit Facility (Prior Revolver) in March 2020, which was repaid in December 2020. Refer to Note 6 – Debt in the Condensed Consolidated Financial Statements for additional information. Additionally, refer to Note 17 - Subsequent Event for additional information about the refinancing of our debt on October 15, 2021.

### **(Gain) Loss on Divestitures and Transaction Costs**

These costs consist of professional fees and other costs related to certain consummated and non-consummated transactions considered by the Company.

### **Litigation Costs**

Net litigation costs for the nine months ended September 30, 2021 primarily consist of reserves for various matters that are subject to litigation; the nine months ended September 30, 2020 amount also included costs related to certain reimbursement matters with our former parent company, Xerox Corporation.

Refer to Note 11 – Contingencies and Litigation to the Condensed Consolidated Financial Statements for additional information.

### **Income Taxes**

The effective tax rate for the three months ended September 30, 2021 was 38.3%, compared to 46.2% for the three months ended September 30, 2020. The September 30, 2021 rate was higher than the U.S. statutory rate of 21%, primarily due to the geographic mix of income, permanent book-tax differences and valuation allowances, partially offset by a benefit attributable to the 2020 return to provision adjustment. The effective tax rate for the three months ended September 30, 2020 was higher than the U.S. statutory rate of 21%, primarily due to the geographic mix of income, the election of the high tax exception for Global Intangible Low Tax Income (GILTI), an increase in US federal tax credits and a benefit attributable to the 2019 return to provision adjustment, partially offset by audit adjustments.

Excluding the impact of discrete tax adjustments, amortization of intangible assets and restructuring costs, the normalized effective tax rate for the three months ended September 30, 2021 was 30.4%. The normalized effective tax rate for the three months ended September 30, 2020 was 23.0%, predominately due to excluding the impact of discrete tax adjustments, the true-up for divestitures, amortization of intangible assets and the restructuring cost. The normalized effective tax rate for the three months ended September 30, 2021 was higher than the three months ended September 30, 2020 rate predominantly due to earnings mix.

The effective tax rate for the nine months ended September 30, 2021 was 58.5% compared with 16.4% for the nine months ended September 30, 2020. The September 30, 2021 rate was higher than the U.S. statutory rate of 21% primarily due to the geographic mix of income, permanent book-tax differences, valuation allowances, and tax audit reserves, partially offset

by tax credits. The September 30, 2020 rate was lower than the U.S. statutory rate of 21%, primarily due to geographic mix of income, increases in valuation allowances, audit adjustments and tax charges recognized on the vesting of employee equity awards, partially offset by an increase in US federal tax credits and a benefit attributable to the 2019 return to provision adjustment.

Excluding the impact of discrete tax adjustments, amortization of intangible assets and restructuring costs, the normalized effective tax rate for the nine months ended September 30, 2021 was 26.8%. The normalized effective tax rate for the nine months ended September 30, 2020 was 27.4%, predominantly due to excluding the impact of true up for divestitures, amortization of intangible assets and restructuring costs and discrete tax items. The normalized effective tax rate for the nine months ended September 30, 2021 was lower than the nine months ended September 30, 2020 rate predominantly due to the geographic mix of income.

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The Company believes it is reasonably possible that unrecognized tax benefits of approximately \$14 million will reverse within 12 months due to an anticipated audit settlement.

### **Operations Review of Segment Revenue and Profit**

Our financial performance is based on Segment Profit/(Loss) and Segment Adjusted EBITDA for the following three segments:

- Commercial Industries,
- Government Services, and
- Transportation.

Other includes our Student Loan business, which the Company exited in the third quarter of 2018.

Unallocated Costs includes IT infrastructure costs that are shared by multiple reportable segments, enterprise application costs and certain corporate overhead expenses not directly attributable or allocated to our reportable segments.

We continue to modernize a significant portion of our infrastructure with new systems and processes and consolidate our data centers as part of our transformation initiatives. There is a risk, however, that our modernization efforts and data center consolidations could materially and adversely disrupt our operations. In addition, the Company's COVID-19 response has also resulted in diversion of management's time and delayed investments from strategic, transformational and technology initiatives which had been planned. See Part I, Item 1A – Risk Factors of our Annual Report on Form 10-K for the year ended December 31, 2020 for additional information.

Results of financial performance by segment were:

## Three Months Ended

September 30,

<u>(in millions)</u>	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs	Total
<b>2021</b>						
Revenue	\$ 509	\$ 349	\$ 180	\$ —	\$ —	\$ 1,038
Segment profit (loss)	\$ 29	\$ 125	\$ 16	\$ —	\$ (94)	\$ 76
Segment depreciation and amortization	\$ 24	\$ 8	\$ 9	\$ —	\$ 13	\$ 54
Adjusted EBITDA	\$ 53	\$ 133	\$ 25	\$ —	\$ (81)	\$ 130
% of Total Revenue	49.0 %	33.7 %	17.3 %	— %	— %	100.0 %
Adjusted EBITDA Margin	10.4 %	38.1 %	13.9 %	— %	— %	12.5 %
<b>2020</b>						
Revenue	\$ 518	\$ 348	\$ 175	\$ —	\$ —	\$ 1,041
Segment profit (loss)	\$ 32	\$ 122	\$ 26	\$ 6	\$ (98)	\$ 88
Segment depreciation and amortization	\$ 24	\$ 6	\$ 9	\$ —	\$ 14	\$ 53
Adjusted EBITDA	\$ 56	\$ 128	\$ 35	\$ 6	\$ (84)	\$ 141
% of Total Revenue	49.8 %	33.4 %	16.8 %	— %	— %	100.0 %
Adjusted EBITDA Margin	10.8 %	36.8 %	20.0 %	— %	— %	13.5 %

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(in millions)	Nine Months Ended September 30,					
	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs	Total
<b>2021</b>						
Revenue	\$ 1,538	\$ 1,005	\$ 549	\$ —	\$ —	\$ 3,092
Segment profit (loss)	\$ 93	\$ 322	\$ 54	\$ —	\$ (259)	\$ 210
Segment depreciation and amortization	\$ 76	\$ 21	\$ 26	\$ —	\$ 40	\$ 163
Adjusted EBITDA	\$ 169	\$ 343	\$ 80	\$ —	\$ (219)	\$ 373
% of Total Revenue	49.7 %	32.5 %	17.8 %	— %	— %	100.0 %
Adjusted EBITDA Margin	11.0 %	34.1 %	14.6 %	— %	— %	12.1 %
<b>2020</b>						
Revenue	\$ 1,610	\$ 969	\$ 529	\$ —	\$ —	\$ 3,108
Segment profit (loss)	\$ 99	\$ 282	\$ 56	\$ 9	\$ (258)	\$ 188
Segment depreciation and amortization	\$ 79	\$ 19	\$ 27	\$ —	\$ 41	\$ 166
Adjusted EBITDA	\$ 178	\$ 301	\$ 83	\$ 2	\$ (217)	\$ 347
% of Total Revenue	51.8 %	31.2 %	17.0 %	— %	— %	100.0 %
Adjusted EBITDA Margin	11.1 %	31.1 %	15.7 %	— %	— %	11.2 %

(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Segment Profit (Loss) Reconciliation to Pre-tax Income (Loss)</b>				
Income (Loss) Before Income Taxes	\$ 19	\$ (13)	\$ 29	\$ (128)
Reconciling items:				
Amortization of acquired intangible assets	31	60	103	180
Restructuring and related costs	10	20	31	56
Interest expense	12	14	38	46
(Gain) loss on divestitures and transaction costs	—	8	1	14
Litigation costs	—	—	2	20
Loss on extinguishment of debt	—	—	2	—
Other (income) expenses, net	4	(1)	4	—
<b>Segment Pre-tax Income (Loss)</b>	<b>\$ 76</b>	<b>\$ 88</b>	<b>\$ 210</b>	<b>\$ 188</b>
Segment depreciation and amortization (including contract inducements)	\$ 54	\$ 53	\$ 163	\$ 166
CA MMIS charge (credit)	—	—	—	(7)
<b>Adjusted EBITDA</b>	<b>\$ 130</b>	<b>\$ 141</b>	<b>\$ 373</b>	<b>\$ 347</b>



## Commercial Industries Segment

### *Revenue*

Commercial Industries revenue for the three months ended September 30, 2021 decreased, compared to the prior year period, due to lost business from prior years, partially offset by higher volumes as the impacts from COVID-19 were less in the third quarter of 2021 as many regions continued to loosen restrictions.

Commercial Industries revenue for the nine months ended September 30, 2021 decreased, compared to the prior year period, due to COVID-19 related volume declines in our Business Operations Solutions service offering and reduced revenue from our HSA offering "Benefit Wallet" (within our HRLS business) as a result of Federal Reserve initiated interest rate reductions, as well as lost business from prior years.

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### *Segment Profit and Adjusted EBITDA*

Decreases in the Commercial Industries segment profit and adjusted EBITDA margin for the three months ended September 30, 2021, compared to the prior year period, were mainly driven by revenue declines, the dynamics of a challenging labor market in both North America and Europe and the impact of temporary cost savings in the third quarter of 2020.

Commercial Industries segment profit and adjusted EBITDA margin decreased for the nine months ended September 30, 2021, compared to the prior year period, mainly driven by overall revenue declines and the dynamics of a challenging labor market in both North America and Europe, partially offset by the result of progress in our efficiency initiatives and one-time contract exit costs in the second quarter of 2020.

### **Government Services Segment**

#### *Revenue*

Government Services revenue for the three months ended September 30, 2021 were substantially unchanged, compared to the prior year period. COVID-19 related volume increases were largely offset by lost business from prior years. The increased volumes from the COVID-19 pandemic were largely driven by the increases in the Supplemental Nutrition Assistance Program (SNAP) volumes and Pandemic SNAP volumes. The legislation for two Federal stimulus programs (Pandemic SNAP and additional unemployment insurance) ended in September 2021. However, some residual revenue from these programs is expected to continue into the fourth quarter of 2021.

Government Services revenue for the nine months ended September 30, 2021 increased, compared to the prior year period, primarily driven by COVID-19 related volume increases. These increases were partially offset by lost business from prior years. The increased volumes from the COVID-19 pandemic was largely driven by the increases in the SNAP volumes and Pandemic SNAP volumes, an increase in the number of citizens to which we distribute unemployment insurance benefits and additional unemployment insurance benefit distributions as a result of Federal stimulus. Within the unemployment benefit business, we generate revenue based on the amount of spending by card holders.

### *Segment Profit and Adjusted EBITDA*

Increases in the Government Services segment profit and adjusted EBITDA margin for the three and nine months ended September 30, 2021, compared to the prior year period, were mainly driven by increased COVID-19 related volume increases at strong margins and expense reductions resulting from progress in our efficiency initiatives.

### **Transportation Segment**

#### *Revenue*

Transportation revenue for the three and nine months ended September 30, 2021 increased, compared to the prior year period, primarily driven by the impact of loosening of numerous COVID-19 related restrictions, particularly in the United States, and the ramp of new business, partially offset by lost business from prior years.

### *Segment Profit and Adjusted EBITDA*

Transportation segment profit and adjusted EBITDA margin decreased for the three and nine months ended September 30, 2021, compared to the prior year period, mainly driven by the impact of legacy lost business in the quarter and temporary cost savings in the prior year that more than offset progress in our efficiency initiatives.

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### Other

#### Segment Profit (Loss) and Adjusted EBITDA

The segment profit for the nine months ended September 30, 2020 was primarily due to an adjustment to the then remaining California Medicaid Management Information System settlement liability of \$7 million as a result of the contract expiring in March 2020. This benefit was excluded from adjusted EBITDA for segment reporting purposes due to its non-recurring nature.

### Unallocated Costs

Unallocated Costs for the three months ended September 30, 2021 decreased, compared to the prior year period primarily due to lower employee medical expenses and a one-time unfavorable COVID-19 related item in the third quarter of 2020. Unallocated Costs for the nine months ended September 30, 2021 were substantially unchanged compared to the prior year period. This was primarily driven by increases in certain employee costs, partially offset by progress in our efficiency initiatives.

### Metrics

#### Signings

Signings are defined as estimated future revenues from contracts signed during the period, including renewals of existing contracts. TCV is the estimated total contractual revenue related to signed contracts. TCV signings is defined as estimated future revenues from contracts signed during the period, including renewals of existing contracts. Due to the inconsistency of when existing contracts end, quarterly and yearly comparisons are not a good measure of renewal performance.

For the three months ended September 30, 2021, the Company signed \$344 million of new business, representing a 26% decrease compared to the prior year period. Renewal TCV for the three months ended September 30, 2021 was \$276 million.

For the nine months ended September 30, 2021, the Company signed \$1,475 million of new business, representing a 4% increase compared to the prior year period. Renewal TCV for the nine months ended September 30, 2021 was \$1,374 million.

(\$ in millions)	Three Months Ended		2021 vs. 2020	
	September 30,		\$ Change	% Change
	2021	2020		
New business TCV	\$ 344	\$ 468	\$ (124)	(26)%
Renewals TCV	276	745	(469)	(63)%
Total Signings	\$ 620	\$ 1,213	\$ (593)	(49)%
Annual recurring revenue signings <sup>(1)</sup>	\$ 87	\$ 96	\$ (9)	(9)%
Non-recurring revenue signings <sup>(2)</sup>	\$ 70	\$ 58	\$ 12	21%

(\$ in millions)	Nine Months Ended		2021 vs. 2020	
	September 30,		\$ Change	% Change
	2021	2020		
New business TCV	\$ 1,475	\$ 1,415	\$ 60	4 %
Renewals TCV	1,374	2,172	(798)	(37)%
Total Signings	\$ 2,849	\$ 3,587	\$ (738)	(21)%
Annual recurring revenue signings <sup>(1)</sup>	\$ 297	\$ 258	\$ 39	15 %
Non-recurring revenue signings <sup>(2)</sup>	\$ 349	\$ 178	\$ 171	96 %

(1) Recurring revenue signings are for new business contracts longer than one year.

(2) Non-recurring revenue signings are for contracts shorter than one year.

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The total new business pipeline at the end of September 30, 2021 and 2020 was \$21.0 billion and \$22.0 billion, respectively. Total new business pipeline is defined as total new business TCV pipeline of deals in all sell stages. This extends past the next twelve-month period to include total pipeline, excluding the impact of divested business as required.

### **Net ARR Activity**

The Net ARR Activity metric is defined as Projected Annual Recurring Revenue for contracts signed in the prior 12 months, less the annualized impact of any client losses, contractual volume and price changes, and other known impacts for which the company was notified in that same time period, which could positively or negatively impact results. The metric annualizes the net impact to revenue. Timing of revenue impact varies and may not be realized within the forward 12-month timeframe. The metric is for indicative purposes only. This metric excludes COVID-related volume impacts and non-recurring revenue signings. This metric is not indicative of any specific 12-month timeframe.

The Net ARR activity metric for the trailing twelve months for each of the prior four quarters was as follows:

(in millions)	Net ARR Activity metric	
September 30, 2021	\$	132
June 30, 2021		106
March 31, 2021		87
December 31, 2020		60

### **Capital Resources and Liquidity**

As of September 30, 2021 and December 31, 2020, total cash and cash equivalents were \$394 million and \$450 million, respectively. Under the Prior Revolver, the Company also had \$750 million available for its various cash needs, of which \$10 million was used for letters of credit. The net amount available to be drawn upon under our Prior Revolver as of September 30, 2021, was \$740 million. See Note 17 - Subsequent Event for information about the refinancing of our debt, including replacement of our Prior Revolver.

As of September 30, 2021, our total debt outstanding was \$1.4 billion of which \$21 million was due within one year. Refer to Note 6 – Debt in the Condensed Consolidated Financial Statements for additional debt information.

In order to provide financial flexibility and finance certain investments and projects, we may continue to utilize external financing arrangements. However, we believe that our cash on hand, projected cash flow from operations, sound balance sheet and the extended maturity profile of our debt resulting from the refinancing described in Note 17 - Subsequent Event will continue to provide sufficient financial resources to meet our expected business obligations for at least the next twelve months.

### **Cash Flow Analysis**

The following table summarizes our cash flows, as reported in our Condensed Consolidated Statement of Cash Flows in the accompanying Condensed Consolidated Financial Statements:

(in millions)	Nine Months Ended September 30,		
	2021	2020	Better (Worse)
Net cash provided by (used in) operating activities	\$ 158	\$ (11)	\$ 169
Net cash provided by (used in) investing activities	\$ (97)	\$ (92)	(5)
Net cash provided by (used in) financing activities	\$ (112)	\$ 99	(211)

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### **Operating activities**

The net improvement in cash used in operating activities of \$169 million, compared to the prior year period, was primarily related to the absence of the 2020 Texas Litigation payment and improved Adjusted EBITDA, partly offset by higher cash used related to product software and deferred contract costs for new business activities and higher net income tax payments.

### **Investing activities**

The increase in cash used in investing activities of \$5 million was primarily due to increased spending related to modernizing our infrastructure and productivity tools.

### **Financing activities**

The increase in cash used in financing activities was primarily related to the absence of the March 2020 \$150 million draw down from our Prior Revolver, which was subsequently repaid in December 2020. Additionally, we repaid the previously outstanding \$34 million of Senior Notes due 2024 on May 1, 2021 and made higher scheduled payments on Term loans of \$27 million in 2021.

## **Market Risk Management**

We are exposed to market risk from changes in foreign currency exchange rates which could affect operating results, financial position and cash flows. We manage our exposure to these market risks through our regular operating and financing activities and, when appropriate, through the use of derivative financial instruments. We may utilize derivative financial instruments to hedge economic exposures, as well as to reduce earnings and cash flow volatility resulting from shifts in market rates. We also may hedge the cost to fund material non-dollar entities by buying currencies periodically in advance of the funding date. This is accounted for using derivative accounting.

Recent market and economic events, including the effects of the COVID-19 pandemic, have not caused us to materially modify nor change our financial risk management strategies with respect to our exposures to foreign currency risk. Refer to Note 7 – Financial Instruments in the Condensed Consolidated Financial Statements for additional discussion on our financial risk management.

## **ITEM 3 — QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The information set forth under the “Market Risk Management” section in Item 2 of this Form 10-Q is hereby incorporated by reference in answer to this Item. During the reporting period, there have been no material changes to the quantitative and qualitative disclosures regarding our market risk set forth in our Annual Report on Form 10-K for the year ended December 31, 2020.

## **ITEM 4 — CONTROLS AND PROCEDURES**

### **(a) Evaluation of Disclosure Controls and Procedures**



The Company's management evaluated, with the participation of our principal executive officer and principal financial officer, or persons performing similar functions, the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), as of the end of the period covered by this Form 10-Q. Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this Form 10-Q, our disclosure controls and procedures were effective to ensure that information we are required to disclose in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms relating to the Company, including our consolidated subsidiaries, and was accumulated and communicated to the Company's management, including the principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

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### **(b) Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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### PART II — OTHER INFORMATION

#### ITEM 1 — LEGAL PROCEEDINGS

The information set forth under Note 11 – Contingencies and Litigation in the Condensed Consolidated Financial Statements of this Form 10-Q is incorporated herein by reference in answer to this Item.

#### ITEM 1A — RISK FACTORS

Reference is made to the Risk Factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2020. Below are additions to our risk factors as previously reported in our 2020 Annual Report.

*The terms of our indebtedness may restrict our current and future operations, particularly our ability to incur debt that we may need to fund initiatives in response to changes in our business, the industries in which we operate, the economy and governmental regulations.*

The terms of our indebtedness include a number of restrictive covenants that impose significant operating and financial restrictions on us and our subsidiaries and limit our ability to engage in actions that may be in our long-term best interests. These may restrict our and our subsidiaries' ability to take some or all of the following actions:

- incur or guarantee additional indebtedness or sell disqualified or preferred stock;
- pay dividends on, make distributions in respect of, repurchase or redeem capital stock;
- make investments or acquisitions;
- sell, transfer or otherwise dispose of certain assets;
- create liens;
- enter into sale/leaseback transactions;
- enter into agreements restricting the ability to pay dividends or make other intercompany transfers;
- consolidate, merge, sell or otherwise dispose of all or substantially all of our or our subsidiaries' assets;
- enter into transactions with affiliates;
- prepay, repurchase or redeem certain kinds of indebtedness;
- issue or sell stock of our subsidiaries; and/or
- significantly change the nature of our business.

As a result of all of these restrictions, we may be:

- limited in how we conduct our business and pursue our strategy;
- unable to raise additional debt financing to operate during general economic or business downturns; or
- unable to compete effectively or to take advantage of new business opportunities.

A breach of any of the restrictive covenants, if applicable, could result in an event of default under the terms of this indebtedness. If an event of default occurs, the lenders would have the right to accelerate the repayment of such debt and the event of default or acceleration may result in the acceleration of the repayment of any other of our debt to which a cross-default or cross-acceleration provision applies. Furthermore, under this indebtedness we have pledged our assets as collateral as security for our repayment obligations. If we were unable to repay any amount of this indebtedness when due and payable, the lenders could proceed against the collateral that secures this indebtedness. In the event our creditors

accelerate the repayment of our borrowings, we may not have sufficient assets to repay such indebtedness, which could materially adversely affect our results of operations and financial condition.

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In addition, our credit facility bears interest at a rate that varies depending on LIBOR. On July 27, 2017, the UK's Financial Conduct Authority, which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. The announcement indicates that LIBOR will not continue to exist on the current basis. More recently, on March 5, 2021 the FCA announced that all LIBOR settings will either cease to be provided by any administrator or no longer be representative. Specifically, this will occur immediately after December 31, 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and immediately after June 30, 2023, in the case of the remaining US dollar settings. The U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, announced a recommendation to replace U.S. dollar LIBOR with a new index calculated based on overnight transactions under short-term repurchase agreements, backed by U.S. Treasury securities called the Secured Overnight Financing Rate ("SOFR"). However, there is currently no definitive successor reference rate to LIBOR and various industry organizations are still working to develop workable transition mechanisms and whether or not SOFR attains market traction as a LIBOR replacement tool remains in question at this time. LIBOR related changes may negatively impact costs of borrowings under our credit facilities, which could have an adverse effect on our results of operations.

## **ITEM 2 — UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

### **(a) Sales of Unregistered Securities during the Quarter ended September 30, 2021**

During the quarter ended September 30, 2021, the Company did not issue any securities in transactions that were not registered under the Securities Act of 1933, as amended.

### **(b) Issuer Purchases of Equity Securities during the Quarter ended September 30, 2021**

None.

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### ITEM 6 — EXHIBITS

- 3.1 [Restated Certificate of Incorporation of Registrant filed with the Department of the State of New York on December 31, 2016.](#)  
Incorporated by reference to Exhibit 3.1 to Registrant's Current Report on Form 8-K dated December 23, 2016.
- 3.2 [Amended and Restated By-Laws of Registrant as amended through December 31, 2016.](#)  
Incorporated by reference to Exhibit 3.2 to Registrants Current Report on Form 8-K dated December 23, 2016.
- 4.4(g) [Indenture dated as of October 15, 2021, among Conduent Incorporated, Conduent Business Services, LLC, Conduent State & Local Solutions, Inc., the Guarantors named therein and U.S. Bank National Association, as Trustee.](#)
- 10.6(f) [Credit Agreement, dated as of October 15, 2021, among Conduent Incorporated, Conduent Business Services, LLC, Conduent State & Local Solutions, Inc., Affiliated Computer Services International, B.V., the Guarantors party thereto from time to time, the Lenders and L/C Issuers party thereto from time to time and Bank of America, N.A., as Administrative Agent.](#)
- 31(a) [Certification of CEO pursuant to Rule 13a-14\(a\) or Rule 15d-14\(a\).](#)
- 31(b) [Certification of CFO pursuant to Rule 13a-14\(a\) or Rule 15d-14\(a\).](#)
- 32 [Certification of CEO and CFO pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101.INS Inline 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.CAL Inline XBRL Taxonomy Extension Calculation Linkbase.
- 101.DEF Inline XBRL Taxonomy Extension Definition Linkbase.
- 101.LAB Inline XBRL Taxonomy Extension Label Linkbase.
- 101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase.
- 101.SCH Inline XBRL Taxonomy Extension Schema Linkbase.
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

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## 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.

### **CONDUENT INCORPORATED**

(Registrant)

By: /S/ STEPHEN WOOD

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**Stephen Wood**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

Date: November 4, 2021

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*Execution Version*

INDENTURE

Dated as of October 15, 2021 Among  
CONDUENT INCORPORATED, as Holdings,

and

CONDUENT BUSINESS SERVICES, LLC and CONDUENT STATE &  
LOCAL SOLUTIONS, INC. as Issuers,

and

the Guarantors named herein

U.S. BANK NATIONAL ASSOCIATION,

as Trustee, Paying Agent, Transfer Agent, Registrar and Notes Collateral Agent



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GUARANTORS  
Exhibit E FORM OF JUNIOR LIEN INTERCREDITOR AGREEMENT





INDENTURE, dated as of October 15, 2021, among Conduent Business Services, LLC, a Delaware limited liability company (the “**Lead Issuer**”), Conduent State & Local Solutions, Inc., a New York corporation (“**CSLS**”), Conduent Incorporated, a New York corporation (“**Holdings**”), the Subsidiary Guarantors (as defined herein) listed on the signature pages hereto, and U.S. Bank National Association, a national banking association, as Trustee, Registrar, Notes Collateral Agent, Transfer Agent and Paying Agent.

## WITNESSETH

WHEREAS, the Lead Issuer has duly authorized the creation of an issue of \$520,000,000 aggregate principal amount of the Issuers’ 6.000% Senior Secured Notes due 2029 (the “**Initial Notes**”);

WHEREAS, the Lead Issuer and each of the Guarantors has duly authorized the execution and delivery of this Indenture (as defined herein).

NOW, THEREFORE, the Lead Issuer, CSLS, each of the Guarantors, the Trustee and the Notes Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein).

## ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE

### **Section 1.01.** *Definitions.*

“**144A Global Note**” means a Global Note, substantially in the form of Exhibit A-1 hereto, bearing the Global Note Legend, and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the applicable Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of Notes sold in reliance on Rule 144A.

“**Accounting Change**” has the meaning set forth in the definition of “GAAP.” “**Acquired**

**Indebtedness**” means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred or assumed in connection with, or in contemplation of, such other Person merging, consolidating or amalgamating with or into or becoming a Restricted Subsidiary of such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Additional First Lien Obligations**” means any Indebtedness having Pari Passu Lien Priority relative to the Notes with respect to the Collateral and is not secured by any other assets; *provided* that an authorized representative of the holders of such Indebtedness shall have executed a joinder to the First Lien Intercreditor Agreement.

**“Additional First Lien Secured Parties”** means the holders of any Additional First Lien Obligations and any trustee, authorized representative or agent of such Additional First Lien Obligations.

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“**Additional Notes**” means any additional Notes (other than the Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01, 2.02, 4.09 and 4.12 hereof.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*” (including, with correlative meanings, the terms “*controlling*,” “*controlled by*” and “*under common control with*”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Agent**” means any Registrar, Transfer Agent, Paying Agent or Authentication Agent. “**Applicable**

**Indebtedness**” has the meaning set forth in the definition of “Weighted Average Life to Maturity.”

“**Applicable Premium**” means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note, and (2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at the First Call Date (such redemption price being set forth in the table set forth in Section 3.07(c) hereof), plus (ii) all required remaining scheduled interest payments due on such Note through the First Call Date (excluding accrued but unpaid interest to, but excluding, the Redemption Date), computed using a discount rate equal to the Applicable Treasury Rate as of such Redemption Date plus 50 basis points, over (b) the then outstanding principal amount of such Note. The Lead Issuer shall calculate, or cause the calculation of, the Applicable Premium, and the Trustee and the Agents shall have no duty to calculate, or verify the Lead Issuer’s calculations of, the Applicable Premium.

“**Applicable Procedures**” means, with respect to any transfer or exchange of or for, redemption of, or notice with respect to beneficial interests in any Global Note or the redemption or repurchase of any Global Note, the rules and procedures of DTC and/or the Depositary that apply to such transfer, exchange, redemption or repurchase.

“**Applicable Treasury Rate**” means, at the time of computation, the weekly average (for the most recently completed week for which such information is available as of the date that is two Business Days prior to the Redemption Date) of the yield to maturity of United States Treasury securities with a constant maturity (as compiled and published in Federal Reserve Statistical Release H.15 with respect to each applicable day during such week or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the Redemption Date to the First Call Date; *provided, however*, that if the period from the Redemption Date to the First Call Date is not equal to the constant maturity of a United States Treasury security for which a yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the Redemption Date to the First Call Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

“**Asset Sale**” means:

(a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions (including by way of a Sale and Lease-Back Transaction), of property or assets of the Lead Issuer or any of its Restricted Subsidiaries (each referred to in this definition as a “**disposition**”); or

(b) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 4.09 hereof), whether in a single transaction or a series of related transactions;

in each case, other than:

(i) any disposition of Cash Equivalents or Investment Grade Securities or obsolete, non-core, surplus, damaged, unnecessary, unsuitable or worn out equipment, inventory or other property in the ordinary course of business or consistent with industry practice or any disposition of inventory, goods or other assets held for sale or no longer used or useful, or economically practical to maintain in the conduct of the business of the Lead Issuer or any of its Restricted Subsidiaries;

(ii) the disposition of all or substantially all of the assets of the Lead Issuer or any Restricted Subsidiary in a manner permitted pursuant to Section 5.01 hereof or any disposition that constitutes a Change of Control pursuant to this Indenture;

(iii) any Permitted Investment and the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.07 hereof or the proceeds of which are used to fund a Permitted Investment or the making of a Restricted Payment;

(iv) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of related transactions which yields net cash proceeds to the Lead Issuer or any of its Restricted Subsidiaries of less than \$75.0 million;

(v) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Lead Issuer or by the Lead Issuer or a Restricted Subsidiary to a Restricted Subsidiary, including pursuant to any Intercompany License Agreement;

(vi) any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(vii) the lease, assignment, sub-lease, license or sub-license of any real or personal property in the ordinary course of business or consistent with industry practices;

(viii) any issuance, disposition or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary (or a Restricted Subsidiary which owns an Unrestricted Subsidiary so long as such Restricted Subsidiary owns no assets other than the Equity Interests of such Unrestricted Subsidiary);

(ix) foreclosures, condemnation, expropriation, forced dispositions, eminent domain or any similar action with respect to assets or the granting of Liens not prohibited by this Indenture, and transfers of any property that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement or upon receipt of the net proceeds of such casualty event;

(x) dispositions or discounts without recourse of accounts receivable, or participations therein, or Securitization Assets or related assets, or any disposition of the Equity Interests in a Subsidiary, all or

substantially all of the assets of which are Securitization Assets, in each case in connection with any Qualified Securitization Facility or the disposition of an account re- ceivable in connection with the collection or compromise thereof;

(xi) any financing transaction with respect to property built or acquired by the Issuers or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by this Indenture;

(xii) the sale, discount, factoring or other disposition of inventory, accounts receivable, notes receivable, equipment or other assets in the ordinary course of business or consistent with past practice or the conversion of accounts receivable to notes receivable;

(xiii) the licensing, sub-licensing or cross-licensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practices;

(xiv) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practices;

(xv) the unwinding or termination of any Hedging Obligations;

(xvi) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(xvii) the lapse or abandonment of intellectual property rights, which in the reasonable good faith determination of the Issuers are not material to the conduct of the business of the Issuers and their Restricted Subsidiaries taken as a whole, or are no longer used or useful or economically practicable or commercially reasonable to maintain;

(xviii) the granting of a Lien that is permitted under Section 4.12 hereof;

(xix) the issuance of directors' qualifying shares and shares issued to foreign nationals or other third parties as required by applicable law;

(xx) Permitted Intercompany Activities and related transactions;

(xxi) transfers of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event; *provided* that any Cash Equivalents received by the Issuers or any of their Restricted Subsidiaries in respect of such Casualty Event shall be deemed to be Net Proceeds of an Asset Sale, and such Net Proceeds shall be applied in accordance with Section 4.10 hereof;

(xxii) any disposition to a Captive Insurance Subsidiary;

(xxiii) any sale of property or assets, if the acquisition of such property or assets was financed with Excluded Contributions and the proceeds of such sale are used to make a Restricted Payment pursuant to Section 4.07(b)(x)(b);

(xxiv) the disposition of any assets (including Equity Interests) (i) acquired in a transaction after the Issue Date, which assets are not used or useful in the core or principal business of the Lead Issuer and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Lead Issuer to consummate any acquisition;



(xxv) any disposition of non-revenue producing assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Lead Issuer or any Restricted Subsidiary to such Person;

(xxvi) Dispositions of property pursuant to any Sale and Lease-Back Transaction or lease leaseback transactions on fair market terms so long as the Net Proceeds thereof shall be applied in accordance with the covenant described under Section 4.10; and

(xxvii) any sale, transfer or other disposition to effect the formation of any Subsidiary that is a Delaware Divided LLC; provided that upon formation of such Delaware Divided LLC, such Delaware Divided LLC shall be a Restricted Subsidiary.

In the event that a transaction (or a portion thereof) meets the criteria of a permitted Asset Sale and would also be a permitted Restricted Payment or Permitted Investment, the Lead Issuer, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Asset Sale and/or one or more of the types of permitted Restricted Payments or Permitted Investments. The Lead Issuer may, in its sole discretion, elect to treat a transaction that would be eligible for an exception to the definition of Asset Sale as an Asset Sale for purposes of this Indenture.

**“Bank Collateral Agent”** means Bank of America, N.A., in its capacity as collateral agent for the lenders and other secured parties under the Senior Secured Credit Facilities, together with its successors and permitted assigns under the Senior Secured Credit Facilities.

**“Bank Products”** means any facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, automatic clearinghouse transfer transactions, controlled disbursements, foreign exchange facilities, stored value cards, merchant services, electronic funds transfer and other cash management or similar arrangements.

**“Bankruptcy Code”** means Title 11, U.S. Code, as amended.

**“Bankruptcy Law”** means the Bankruptcy Code or any similar federal, state or applicable non-U.S. law for the relief of debtors.

**“Below Investment Grade Rating Event”** means that the Notes become rated below Baa3 (stable) by Moody’s or below BBB- (stable) by Standard & Poor’s (or, if either such entity ceases to rate the Notes for reasons outside of the control of the Issuers, below the equivalent investment grade credit rating from any other “nationally recognized statistical rating organization” within the meaning of Section 3(a)(62) under the Exchange Act, selected by the Lead Issuer as a replacement agency) on any date from the date of the public notice of an arrangement that results in a Change of Control until the end of the 60 day period following public notice of the occurrence of a Change of Control (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any of such rating agencies). In determining whether a Change of Control has occurred for purposes of this definition, clause (ii) of the last paragraph of the definition of Change of Control shall be disregarded.

**“Bilateral Letter of Credit Facility”** means any letter of credit facility of the Lead Issuer or any Restricted Subsidiary entered into with (i) a lender (or an Affiliate of a lender) or under the Senior Secured Credit Facilities

or (ii) any other financial institution, in each case other than pursuant to the credit agreement governing the Senior Secured Credit Facilities and including, without limitation, any letter of credit facility of the Lead Issuer or any Restricted Subsidiary existing on the Issue Date that was entered into prior to the Issue Date with a Person that is a lender or an Affiliate of a lender on the Issue Date.

“**Board**” with respect to a Person means the board of directors, board of managers, sole member or managing member or other governing body of such Person, or if such Person is owned or managed by a single entity or has a general partner, the board of directors, board of managers, sole member or managing member or other governing body of such entity or general partner, or in each case, any duly authorized committee thereof, and the term “**director**” means a member of the applicable Board.

“**Broker-Dealer Subsidiary**” means any Subsidiary of the Lead Issuer that is a broker-dealer, state chartered trust company, national trust company or thrift limited to trust powers.

“**Business Day**” means each day which is not a Legal Holiday.

“**Business Expansion**” means (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by the Lead Issuer or a Restricted Subsidiary and (b) each creation or expansion into new markets (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“**Capital Markets Debt Securities**” means debt securities that are marketed to potential investors pursuant to an offering process similar to the offering of Notes under the Offering Memorandum, which offering is made subject to registration under the Securities Act or pursuant to an exemption thereunder.

“**Capital Stock**” means:

- (a) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means (i) any Subsidiary of the Lead Issuer operating for the purpose of (a) insuring the businesses, operations or properties owned or operated by the Lead Issuer or any of its Subsidiaries, including their future, present or former employees, directors, officers, managers, members, partners, independent

contractors or consultants, and related benefits and/or (b) conducting any activities or business incidental thereto (it being understood and agreed that activities which are relevant

or appropriate to qualify as an insurance company for U.S. federal or state tax purposes shall be considered “activities or business incidental thereto”) or (ii) any Subsidiary of any such insurance subsidiary operating for the same purpose described in clause (i) above.

“**Cash Equivalents**” means:

- (a) United States dollars;
- (b) (i) Canadian dollars, pounds sterling, yen, euros or any national currency of any participating member state of the EMU; or
  - (ii) in such other currencies held by the Lead Issuer or any Restricted Subsidiary from time to time in the ordinary course of business or consistent with industry practice;
- (c) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of 24 months or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding 24 months and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$100 million (or the foreign currency equivalent as of the date of determination);
- (e) repurchase obligations for underlying securities of the types described in clauses (c), (d), (g) and (h) of this definition entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (d) above;
- (f) commercial paper and variable or fixed rate notes rated at least P-2 by Moody’s, at least A-2 by S&P or F2 by Fitch (or, if at any time Moody’s, S&P or Fitch shall not be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;
- (g) marketable short-term money market and similar funds having a rating of at least P-2, A-2 or F2 from Moody’s, S&P or Fitch, respectively (or, if at any time Moody’s, S&P or Fitch shall not be rating such obligations, an equivalent rating from another Rating Agency);
- (h) readily marketable direct obligations issued by, or unconditionally guaranteed by, any state, commonwealth or territory of the United States or any political subdivision, public instrumentality or taxing authority thereof with maturities of 24 months or less from the date of acquisition;
- (i) readily marketable direct obligations issued by, or unconditionally guaranteed by, any foreign government or any political subdivision, public instrumentality or taxing authority thereof, in each case (other than in the case of such obligations issued or guaranteed by any participating member state of the EMU)

having an Investment Grade Rating from either Moody's, S&P or Fitch (or, if at any time Moody's, S&P or Fitch shall not be rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(j) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated A (or the equivalent thereof) or better by S&P, A2 (or the equivalent thereof) or better by Moody's or A (or the equivalent thereof) or better by Fitch (or, if at any time Moody's, S&P or Fitch shall not be rating such obligations, an equivalent rating from another Rating Agency);

(k) securities with maturities of 24 months or less from the date of acquisition backed by standby letters of credit issued by any financial institution or recognized securities dealer meeting the qualifications specified in clause (d) above;

(l) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P, "A2" or higher from Moody's or "A" or higher from Fitch with maturities of 24 months or less from the date of acquisition; and

(m) investment funds investing at least 90% of their assets in currencies, instruments or securities of the types described in clauses (a) through (l) above.

In the case of Investments by the Lead Issuer or any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (h) and clauses (j), (k), (l) and (m) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (m) and in this paragraph.

In addition, in the case of Investments by any Captive Insurance Subsidiary, Cash Equivalents shall also include (a) such Investments with average maturities of 12 months or less from the date of acquisition in issuers rated BBB- (or the equivalent thereof) or better by S&P, Baa3 (or the equivalent thereof) or better by Moody's or the equivalent ratings by Fitch, in each case at the time of such Investment and (b) any Investment with a maturity of more than 12 months that would otherwise constitute Cash Equivalents of the kind described in any of clauses (a) through (m) of this definition or clause

(a) above, if the maturity of such Investment was 12 months or less; provided that the effective maturity of such Investment does not exceed 15 years.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (a) and (b) above, *provided* that such amounts are converted into any currency listed in clauses (a) and (b) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

For the avoidance of doubt, any items identified as Cash Equivalents under this definition will be deemed to be Cash Equivalents for all purposes under this Indenture regardless of the treatment of such items under GAAP.

**"Casualty Event"** means any event that gives rise to the receipt by the Lead Issuer or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.



**“Change of Control”** means the occurrence of any of the following after the Issue Date:

(a) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation or amalgamation), of all or substantially all of the assets of the Holdings and its Subsidiaries, taken as a whole, to any Person other than any Permitted Holder, the Issuers or any Guarantor; *provided* that such sale, lease, transfer, conveyance or other disposition shall not constitute a Change of Control unless any Person (other than any Permitted Holder or a Holding Company) or Persons (other than any Permitted Holders or a Holding Company) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the transferee Person in such sale, lease, transfer, conveyance or other disposition of assets, as the case may be;

(b) Holdings becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by (A) any Person (other than any Permitted Holder) or (B) Persons (other than any Permitted Holders) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 50% of the total voting power of the Voting Stock of Holdings directly or indirectly through any of its direct or indirect parent holding companies, in each case, other than in connection with any transaction or series of transactions in which Holdings shall become the Wholly Owned Subsidiary of a Holding Company or for which the sole purpose is to collapse a holding company structure; or

(c) Holdings shall cease to (i) own directly 100% of the Equity Interests of the Lead Issuer or (ii) directly or indirectly own 100% of the Equity Interests of CSLS.

Notwithstanding the preceding or any provision of Rule 13d-3 or 13d-5 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement; (ii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of Holdings owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred; (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the Board of such parent entity; (iv) a transfer of assets be-

tween or among the Issuers and their Restricted Subsidiaries shall not itself constitute a Change of Control; and (v) any of the events described above in clauses (i) through (iv) shall not constitute a “Change of Control” after a Covenant Suspension Event unless a Below Investment Grade Rating Event also occurs in connection therewith.

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

“**Collateral**” means all of the assets and property of the Issuers or any Guarantor, whether real, personal or mixed securing or purported to secure any First Lien Notes Obligations, other than Excluded Assets.

“**Collateral Agent**” means (1) in the case of any Senior Secured Credit Facility Obligations, the Bank Collateral Agent, (2) in the case of the First Lien Notes Obligations, the Notes Collateral Agent and (3) in the case of any Additional First Lien Obligations, the collateral agent with respect thereto.

“**Collateral Requirement**” means, at any time, the requirement that, subject to the First Lien Intercreditor Agreement, as applicable:

(a) the Notes Collateral Agent shall have received each Security Document required to be delivered on the Issue Date pursuant to Section 12.01 hereof or from time to time pursuant to Section 4.18 hereof and the Security Agreement, subject to the limitations and exceptions of this Indenture, duly executed by the Issuers and each Guarantor party thereto;

(b) the Obligations and the Guarantees shall have been secured pursuant to the Security Agreement and the Holdings Pledge Agreement, as applicable, by a first-priority perfected security interest in (i) all the Equity Interests of the Issuers and (ii) all Equity Interests of each Restricted Subsidiary (that is not an Excluded Subsidiary (other than any Restricted Subsidiary that is an Excluded Subsidiary solely pursuant to clause (f) or (j)(y) of the definition thereof)) directly owned by an Issuer or any Subsidiary Guarantor, subject to exceptions and limitations otherwise set forth in this Indenture and the Security Documents (to the extent appropriate in the applicable jurisdiction) (and the Notes Collateral Agent or its bailee shall have received certificates, documents or title or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);

(c) all Pledged Intercompany Debt that is evidenced by a promissory note shall have been delivered to the Notes Collateral Agent or its bailee pursuant to the Security Agreement and the Notes Collateral Agent or its bailee shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(d) the Obligations and the Guarantees shall have been secured by a perfected security interest in substantially all now owned or at any time hereafter acquired tangible and intangible assets of the Issuer and each Subsidiary Guarantor (including Equity Interests, intercompany debt, accounts, inventory, equipment, investment property, contract rights, IP Rights (as defined in the Senior Secured Credit Facilities), other general intangibles, Material Real Property (which in the case of Material Real Property shall include Mortgages on such Material Real Property) and proceeds of the foregoing), in each case, subject to exceptions and limitations otherwise set forth in this Indenture and the Security Documents (to the extent appropriate in the applicable jurisdiction), in each case with the priority required by the Security Documents;

(e) subject to limitations and exceptions of this Indenture and the Security Documents, to the extent a security interest in and Mortgages on any Material Real Property are required pursuant to clause (d) above or Sections 4.18 and 12.01 hereof, the Notes Collateral Agent shall have received (i) counterparts of a

Mortgage with respect to such Mortgaged Property duly executed and delivered by the record owner of such property, together with evidence such Mortgage has been duly executed, acknowledged and delivered by a duly authorized officer of each party thereto, in form suitable for filing or recording in all filing or recording offices as necessary

or desirable in order to create a valid and subsisting perfected Lien (subject only to Liens described in clause (ii) below) on the property and/or rights described therein in favor of the Notes Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a customary manner (it being understood that if a mortgage tax or similar charge will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 100% of the fair market value of the property covered by such Mortgage (as reasonably determined by the Lead Issuer in good faith) at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value), (ii) a fully paid American Land Title Association Lender's policy of title insurance (or a marked-up title insurance commitments having the effect of a policy of title insurance) on such Mortgaged Property naming the Notes Collateral Agent as the insured for its benefit and that of the Secured Parties and their respective successors and assigns (each, a "**Mortgage Policy**," and collectively, the "**Mortgage Policies**") issued by a nationally recognized title insurance company in form and substance and in an amount as necessary and appropriate (not to exceed 100% of the fair market value of the property covered thereby), insuring such Mortgage to be a valid subsisting first priority Lien on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 4.12 hereof or Liens otherwise consented to by the Notes Collateral Agent, each of which shall (A) to the extent reasonably necessary, include such coinsurance and reinsurance arrangements (with provisions for direct access, if reasonably necessary) as customary, (B) contain a "tie-in" or "cluster" endorsement, if available, and applicable, under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), and (C) have been supplemented by such endorsements as necessary and appropriate (including endorsements on matters relating to usury, first loss, zoning, contiguity, doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot, revolving credit and so-called comprehensive coverage over covenants and restrictions), to the extent such endorsements are available in the applicable jurisdiction at commercially reasonable rates; *provided, however*, that in lieu of a zoning endorsement the Notes Collateral Agent shall accept a zoning report from a nationally recognized zoning report provider, (iii) an opinion from local counsel in each jurisdiction (A) where such Mortgaged Property is located regarding the enforceability and perfection of such Mortgage and any related fixture filings and (B) where an Issuer or the applicable Subsidiary Guarantor granting the Mortgage on such Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Notes Collateral Agent and (iv) a new ALTA or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from such Mortgage Policy and issue the endorsements required in clause (ii) above; and

(f) except as otherwise contemplated by this Indenture or any Security Document, all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and filings with the United States Patent and Trademark Office and United States Copyright Office, required by the Security Documents, applicable Law or reasonably requested by the Notes Collateral Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term "Collateral Requirement," shall have been filed, registered or recorded or delivered to the Notes Collateral Agent for filing, registration or recording.



Notwithstanding the foregoing provisions of this definition or anything in this Indenture or any other Security Document to the contrary:

(A) the foregoing definition shall not require, unless otherwise stated in the definition of “Excluded Assets”, the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance or taking other actions with respect to the Excluded Assets;

(B) (i) the foregoing definition shall not require control agreements with respect to any cash, deposit accounts or securities accounts or any other assets requiring perfection through control agreements; (ii) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S., including any IP Rights (as defined in the Senior Secured Credit Facilities) registered in any non-U.S. jurisdiction, or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction) (iii) no landlord, mortgagee or bailee waivers shall be required, (iv) no notice shall be required to be sent to insurers, account debtors or other contractual third parties when no Event of Default has occurred and is continuing and (v) except to the extent that perfection and priority may be achieved by the filing of a financing statement under the Uniform Commercial Code with respect to an Issuer or a Guarantor, neither this Indenture nor the Security Documents shall contain any requirements as to perfection or priority with respect to any assets or property described in clauses (i) or (ii) of this clause (B);

(C) the Notes Collateral Agent (or its bailee) shall have received on or prior to the Closing Date Uniform Commercial Code financing statements in appropriate form for filing under the Uniform Commercial Code in the jurisdiction of incorporation or organization of each Grantor;

(D) in the event that a Foreign Subsidiary becomes a Subsidiary Guarantor such Subsidiary Guarantor shall grant a perfected lien on substantially all of its assets pursuant to necessary arrangements, pursuant to documentation and subject to customary limitations in such jurisdiction as may be reasonably necessary, and nothing in the definition of “Excluded Asset” or other limitation in this Indenture shall in any way limit or restrict the pledge of assets and property by any such Foreign Subsidiary that is a Guarantor or the pledge of the Equity Interests of such Foreign Subsidiary by the Issuer or any Subsidiary Guarantor that holds such Equity Interests;

(E) Liens required to be granted from time to time pursuant to the Collateral Requirement shall be subject to exceptions and limitations (if any) set forth in this Indenture and the Security Documents;

(F) the deliveries and/or documents required pursuant to this definition shall be deemed to be satisfactory in respect of such matters under this Indenture and the Security Documents to the extent that such deliveries and/or documents are determined, in the judgment of the Bank Collateral Agent, to be satisfactory in respect of any such matters under the Senior Secured Credit Facilities; and

(G) the time periods, with respect to the perfection of the security in, or obtaining of title insurance, legal opinions or other deliverables on, particular assets or collateral that are acquired by an Issuer or any Guarantor following the Issue Date in order to satisfy the Collateral Requirement with respect to such after-

acquired collateral, shall be extended to the respective time periods as (i) permitted by the Senior Secured Credit Facilities or otherwise agreed to by the



Bank Collateral Agent or (ii) otherwise established by the Lead Issuer following its good faith determination that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Indenture or the Security Documents, as evidenced in a certification in an Officer's Certificate delivered to the Trustee and Notes Collateral Agent.

**“Consolidated First Lien Net Leverage Ratio”** means, as of any date of determination, the ratio of (1) the amount equal to (a) the aggregate principal amount of Consolidated Total Indebtedness of the Lead Issuer and its Restricted Subsidiaries, plus (b) in connection with the incurrence of any Indebtedness pursuant to clauses (a) and (b) of Section 4.09 or the creation or incurrence of any Permitted Liens, the Reserved Indebtedness Amount of the Lead Issuer and its Restricted Subsidiaries in each case, minus the sum of (i) the portion of Indebtedness of the Lead Issuer or any Restricted Subsidiary included in Consolidated Total Indebtedness that is not secured by any Lien on the Collateral and (ii) the portion of Indebtedness of the Lead Issuer or any Restricted Subsidiary included in Consolidated Total Indebtedness that is secured by Liens on the Collateral, which Liens are expressly subordinated or junior to the Liens securing the First Lien Notes Obligations minus (c) up to \$300.0 million of Cash Equivalents that would be stated on the balance sheet of the Lead Issuer and its Restricted Subsidiaries as of such date of determination, in each case of subclauses (a), (b) and (c), with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio and as determined in good faith by the Lead Issuer, to (2) LTM EBITDA.

**“consolidated”**, unless otherwise specifically indicated, when used with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries.

**“Consolidated Interest Expense”** means, with respect to any Person for any period, without duplication, the sum of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (i) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (iv) the interest component of Financing Lease Obligations, and (v) net payments, if any made (less net payments, if any, received), pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (o) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under any Credit Facilities or any similar instruments, (p) any additional interest with respect to failure to comply with any registration rights agreement owing with respect to any securities, (q) costs associated with obtaining Hedging Obligations, (r) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with the Transactions or any acquisition, (s) penalties and interest relating to taxes, (t) any “additional interest” or “liquidated damages” with respect to other securities for failure to timely comply with registration rights obligations, (u) amortization or expensing of deferred financing fees, amendment and consent fees, debt issuance costs, commissions, fees, expenses and discounted liabilities and any other amounts of non-cash interest, (v) any expensing of bridge, commitment and other financing fees and any other fees related to the Transactions or any acquisitions after the Issue Date, (w) commissions, discounts, yield and other fees and charges (including any

interest expense) related to any Qualified Securitization Facility, (x) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, penalty or cost, (y) interest expense

attributable to a parent entity resulting from push-down accounting and (z) any lease, rental or other expense in connection with a Non-Financing Lease Obligation); *plus*

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(c) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP (or, if not implicit, as otherwise determined in accordance with GAAP).

“**Consolidated Net Income**” means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis determined in accordance with GAAP and without any reduction in respect of preferred stock dividends; *provided* that, to the extent included therein:

(a) all extraordinary gains and losses and all gains and losses realized in connection with any sale or other disposition of assets outside of the ordinary course of business, the disposition of securities or the early extinguishment or repurchase of Indebtedness or Swap Obligations, together with any related provision for taxes on any such gain, will be excluded;

(b) (i) the net income (or loss) of any Person that is not a Restricted Subsidiary or (ii) that is accounted for by the equity method of accounting will be excluded, except to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;

(c) for purposes of determining the amount of Restricted Payments that may be made pursuant to clause (1) of the definition Cumulative Credit, the net income (or loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders; *provided* that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in Cash Equivalents (or to the extent converted, or having the ability to be converted, into Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(d) the cumulative effect of a change in accounting principles will be excluded;

(e) any unrealized gains, losses, expenses or charges resulting from hedging, option, warrant or other derivative transactions (including, without limitation, with respect to Swap Obligations or Permitted Convertible Notes Offerings) will be excluded;

(f) any (a) non-cash compensation charges, (b) non-cash costs or expenses resulting from stock option plans, employee benefit plans, compensation charges or postemployment bene-

fit plans, or grants or awards of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights and (c) impairments, write-offs or write-downs of goodwill or other assets will be excluded;

(g) any gain or loss for such period from currency transaction gains or losses or net gains or losses related to currency remeasurements of Indebtedness will be excluded;

(h) any unrealized net after-tax income (loss) from Swap Obligations or cash management Obligations and the application of Accounting Standards Codification Topic 815 “Derivatives and Hedging” or from other derivative instruments will be excluded;

(i) any non-cash interest expense resulting from the application of Accounting Standards Codification Topic 470-20 “Debt — Debt with Conversion Options — Recognition” will be excluded;

(j) any charges resulting from the application of Accounting Standards Codification Topic 805 “Business Combinations,” Accounting Standards Codification Topic 350 “Intangibles — Goodwill and Other,” Accounting Standards Codification Topic 360-10-35-15 “Impairment or Disposal of Long-Lived Assets,” Accounting Standards Codification Topic 480-10-25-4 “Distinguishing Liabilities from Equity — Overall — Recognition” or Accounting Standards Codification Topic 820 “Fair Value Measurements and Disclosures” shall be excluded;

(k) any charges resulting from amortization of actuarial gains and losses under Accounting Standards Codification Topic 715 “Compensation — Retirement Benefits” will be excluded;

(l) any deferred financing costs and original issue discounts amortized or written off, any premiums and prepayment penalties, breakage costs, other related fees, expenses or reserves paid or recorded in connection with any acquisition, disposition, financing, refinancing or repayment, including the expensing of bridge, commitment and other financing costs, and any fees, expenses, charges or change in control payments related to such transactions (including any costs relating to auditing prior periods, any transition-related expenses, and transaction expenses incurred before, on or after the effective date of such transactions and costs and expenses after the effective date of such transactions related to the employment or transition of terminated employees) will be excluded;

(m) any non-cash costs related to the termination of any employee benefit plan will be excluded;

(n) any non-recurring or unusual charges, expenses, gains or losses will be excluded;

(o) non-cash charges for deferred tax asset valuation allowances shall be excluded;

(p) any expenses or charges related to streamlining and restructuring activities (including related payroll, relocation and contract termination charges or expenses), facilities-exiting or facilities closure, idling or repurposing activities, business optimization activities, asset write-downs or write-offs, reductions in force, furloughs, severance, retention bonuses and professional fees related to any of the foregoing, will be excluded; and

(q) if such Person is treated as a disregarded entity or partnership for U.S. federal, state and/or local income tax purposes for such period or any portion thereof, the amount of distributions

actually made to any direct or indirect parent company of such Person in respect of such period in accordance with Section 4.07(b)(xx) shall be included in calculating Consolidated Net Income as though such amounts had been paid as taxes directly by such Person for such period.

Unless otherwise specified herein, “Consolidated Net Income” refers to Consolidated Net Income of the Lead Issuer.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture.

Notwithstanding the foregoing, for the purpose of Section 4.07 hereof only (other than clause (4) of the definition of “Cumulative Credit”), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Lead Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Lead Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Lead Issuer or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to clause (4) of the definition of “Cumulative Credit”.

“**Consolidated Secured Net Leverage Ratio**” means, as of any date of determination, the ratio of (1) the amount equal to (a) the aggregate principal amount of Consolidated Total Indebtedness of the Lead Issuer and its Restricted Subsidiaries, plus (b) in connection with the incurrence of any Indebtedness pursuant to Section 4.09(a) or (b) hereof or the creation or incurrence of any Lien pursuant to the definition of “Permitted Liens,” the Reserved Indebtedness Amount of the Lead Issuer and its Restricted Subsidiaries in each case, minus the portion of Indebtedness of the Lead Issuer or any Restricted Subsidiary included in Consolidated Total Indebtedness that is not secured by any Lien on the Collateral minus (c) up to \$300.0 million of Cash Equivalents that would be stated on the balance sheet of the Lead Issuer and its Restricted Subsidiaries as of such date of determination, in each case of subclauses (a), (b) and (c), with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio and as determined in good faith by the Lead Issuer to (2) LTM EBITDA.

“**Consolidated Total Indebtedness**” means, as of any date of determination, an amount equal to the sum of (a) the aggregate amount of all outstanding Indebtedness of the Lead Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Financing Lease Obligations and debt obligations evidenced by bonds, notes, debentures, promissory notes and similar instruments, as determined in accordance with GAAP (excluding for the avoidance of doubt all undrawn amounts under revolving credit facilities and letters of credit, and all obligations relating to Qualified Securitization Facilities and Non-Financing Lease Obligations and excluding the effects of any discounting of Indebtedness resulting from the application of repurchase or purchase accounting in connection with the Transactions or any acquisition) and (b) in connection with the incurrence of any Indebtedness pursuant to Section 4.09(a) hereof, the aggregate amount of all outstanding Disqualified Stock of the Lead Issuer and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis,

with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case de-



terminated on a consolidated basis in accordance with GAAP; *provided*, that Consolidated Total Indebtedness shall not include Indebtedness in respect of (A) any letter of credit, except to the extent of unreimbursed amounts under standby letters of credit, *provided* that any unreimbursed amounts under commercial letters of credit shall not be counted as Consolidated Total Indebtedness until five Business Days after such amount is drawn and (B) Hedging Obligations. For purposes hereof, the “*maximum fixed repurchase price*” of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Lead Issuer. The U.S. Dollar Equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. Dollar Equivalent principal amount of such Indebtedness.

“**Consolidated Total Net Leverage Ratio**” means, as of any date of determination, the ratio of

(1) the amount equal to (a) Consolidated Total Indebtedness of the Lead Issuer and its Restricted Subsidiaries as of such date of determination plus (b) in connection with the incurrence of any Indebtedness pursuant to clause (a) or (b) of Section 4.09, the Reserved Indebtedness Amount of the Lead Issuer and its Restricted Subsidiaries as of such date of determination, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio and as determined in good faith by the Lead Issuer minus (c) up to \$300.0 million of Cash Equivalents that would be stated on the balance sheet of the Lead Issuer and its Restricted Subsidiaries as of such date of determination, in each case of subclauses (a), (b) and (c), with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio and as determined in good faith by the Lead Issuer, to (2) LTM EBITDA.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(i) for the purchase or payment of any such primary obligation; or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Controlled Affiliate**” of a Person means an Affiliate of such Person that is controlled (as defined in the definition of “Affiliate”) by such Person.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, other than the Investors, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Lead Issuer and/or other companies.

“**Corporate Trust Office**” means the office of the Trustee at which any time its corporate trust business related to this Indenture shall be administered, which office (a) solely for purposes of the transfer, exchange or surrender of the Notes, is located at 111 Filmore Avenue, St. Paul, MN 55107, Attention: Conduent Incorporated, and for all other purposes is located at CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103, Attention: U.S. Bank Global Corporate Trust - Conduent Incorporated, or such other address as the Trustee may designate from time to time by notice to the Holders and the Lead Issuer, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Lead Issuer).

“**Credit Facilities**” means, with respect to the Lead Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Secured Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities, agreements or indentures), designated in writing by the Lead Issuer as a Credit Facility under this Indenture, providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, Mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, expansions, increases, renewals, restatements or refundings thereof, in whole or in part, and any indentures, agreements, credit facilities or commercial paper facilities that replace, refund, supplement, extend, expand, increase, amend, restate or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental, extending, amended, restating or refinancing facility, arrangement, agreement or indenture (or new or additional facility, arrangement, agreement or indenture) that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such expansion or increase in borrowings or issuances is permitted under Section 4.09 hereof) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or other holders or investors.

“**Custodian**” means the Trustee, as custodian with respect to the Notes, each in global form, or any successor entity thereto.

“**Default**” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

“**Definitive Note**” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(d) hereof, substantially in the form of Exhibit A-1 hereto, except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“**Delaware Divided LLC**” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“**Delaware LLC**” means any limited liability company organized or formed under the laws of the State of Delaware.

**“Delaware LLC Division”** means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

**“Depository”** means, with respect to the Notes issuable or issued in whole or in part in global form, any Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as Depository hereunder and having become such pursuant to the applicable provision of this Indenture.

**“Designated Non-cash Consideration”** means the fair market value of non-cash consideration received by the Lead Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of or collection or payment on 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 exchange for consideration in the form of Cash Equivalents in compliance with Section 4.10 hereof.

**“Designated Preferred Stock”** means Preferred Stock of the Lead Issuer or any direct or indirect parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuers or any of their Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (B) of Section 4.07(a) hereof.

**“Disinterested Director”** means, with respect to any Affiliate Transaction, a member of the Board of the Lead Issuer or any direct or indirect parent of the Lead Issuer having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of the Lead Issuer or any direct or indirect parent of the Lead Issuer shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Lead Issuer or any direct or indirect parent of the Lead Issuer or any options, warrants or other rights in respect of such Capital Stock.

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Capital Stock of such Person or any direct or indirect parent entity thereof that would not otherwise constitute Disqualified Stock, and other than solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely for Capital Stock of such Person or as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Lead Issuer, any of its direct or indirect parent of the Lead Issuer or the Lead Issuer’s Subsidiaries or by any such plan to such future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Lead Issuer or its Subsidiaries or a direct or indirect parent entity of the Lead Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; *provided, further*, that any Capital Stock held by any future, current or former employee, director, officer, member, partner, manager or

consultants (or their respective Controlled Investment Affiliates or Immediate Family Mem- bers) of the Lead Issuer, any of its Subsidiaries, any of its direct or indirect parent companies or any other

entity in which the Lead Issuer or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of the Lead Issuer or any direct or indirect parent of the Lead Issuer, in each case pursuant to any stock subscription or shareholders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement, shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Lead Issuer or its Subsidiaries or any direct or indirect parent of the Lead Issuer or in order to satisfy applicable statutory or regulatory obligations.

“**Domestic Subsidiary**” means, with respect to any Person, any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

“**EBITDA**” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, the following, in each case (and to the extent applicable) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(i) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period; *plus*

(ii) the Fixed Charges of such Person and its Restricted Subsidiaries for such period;  
*plus*

(iii) depreciation, amortization (including amortization of intangibles, deferred financing fees, debt incurrence costs, commissions, fees and expenses, but excluding amortization of prepaid cash expenses that were paid in a prior period), depletion and other non-cash expenses or charges (including any write-offs of debt issuance or deferred financing costs or fees and impairment charges and the impact on depreciation and amortization of purchase accounting, but excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses or charges were deducted in computing such Consolidated Net Income; *plus*

(iv) the amount of net loss resulting from the payment of any premiums, fees or similar amounts that are required to be paid under the terms of the instrument(s) governing any Indebtedness upon the repayment, prepayment or other extinguishment of such Indebtedness in accordance with the terms of such Indebtedness; *plus*

(v) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP; *plus*

(vi) any fees and expenses, including deferred amortization and deferred financing costs, paid in connection with the Transactions; *plus*

(vii) the amount of (x) pro forma “run rate” cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Lead

Issuer in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Lead Issuer) within 24 months after the Issue Date (including from any actions taken in whole or in part prior to the Issue Date), net of the amount of actual benefits realized during such period from such actions and (y) pro forma “run rate” cost savings, operating



expense reductions and synergies related to mergers and other business combinations, acquisitions, investments, dispositions, divestitures, restructurings, operating improvements, cost savings initiatives and other similar transactions or initiatives that are reasonably identifiable and factually supportable and projected by the Lead Issuer in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in each case, including any steps or actions taken in whole or in part prior to the Issue Date or the applicable consummation date of such transaction, initiative or event) or are expected to be taken (in the good faith determination of the Lead Issuer) within 24 months after any such transaction, initiative or event is consummated, net the amount of actual benefits realized during such period from such actions, in each case, calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period for which EBITDA is being determined and as if such cost savings, operating expense reductions, synergies and EBITDA pursuant to contracted pricing were realized on the first day of the applicable period for the entirety of such period; provided that no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (vii) to the extent duplicative of any expenses or charges otherwise added to EBITDA, whether through a pro forma adjustment or otherwise, for such period; *provided* that the aggregate amount added back pursuant to this clause (vii) for any period of four fiscal quarters shall not exceed 20% of EBITDA for such period (calculated prior to giving effect to this clause (vii)); minus

(viii) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue or other income and charges in estimates in expense accruals in the ordinary course of business, in each case, on a consolidated basis and determined in accordance with GAAP.

Unless otherwise specified herein, “EBITDA” refers to EBITDA of the Lead Issuer.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

“**Equityholding Vehicle**” means any direct or indirect parent entity of the Lead Issuer and any equityholder thereof through which future, present or former employees, directors, officers, managers, members or partners of the Lead Issuer or any of its Subsidiaries or direct or indirect parent entities hold Capital Stock of the Lead Issuer or such parent entity.

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“**Equity Offering**” means any public or private sale or issuance of common equity or Preferred Stock (excluding Disqualified Stock) of the Lead Issuer or any of its direct or indirect parent companies other than:

- (a) public offerings with respect to the Lead Issuer’s or any direct or indirect parent company’s common equity registered on Form S-8;
- (b) issuances to any Subsidiary of the Lead Issuer; and
- (c) any such public or private sale or issuance that constitutes an Excluded Contribu-

tion.

“euro” means the single currency of participating member states of the EMU.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder (and with respect to the definitions of “Change of Control” and “Permitted Holders” only, as in effect on the Issue Date).

“**Excluded Assets**” means the following:

- (a) any interest in fee-owned real property (other than Material Real Properties) and all leasehold interests in real property;
- (b) motor vehicles and other assets subject to certificates of title, letter of credit rights (except to the extent constituting a supporting obligation for other Collateral as to which perfection of the security interest in such other Collateral may be accomplished by the filing of a Uniform Commercial Code (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a Uniform Commercial Code financing statement) and commercial tort claims with a value of less than \$10 million;
- (c) pledges and security interests prohibited by applicable law, rule, regulation or contractual obligation (with respect to any such contractual restriction to the extent permitted under this Indenture and binding on such assets on the Issue Date or on the date of the acquisition thereof or entered into in connection with the incurrence of indebtedness of the type contemplated by Section 4.09(b)(iv)) (but not entered into in contemplation thereof (other than in connection with the incurrence of indebtedness of the type contemplated by Section 4.09(b)(iv))) (in each case, except to the extent such prohibition is unenforceable after giving effect to the applicable provisions of the Uniform Commercial Code of any applicable jurisdiction) or which could require governmental (including regulatory) consent, approval, license or authorization to be pledged (unless such consent, approval, license or authorization has been received)
- (d) Equity Interests in any Person other than Wholly-Owned Subsidiaries to the extent the pledge thereof is not permitted by the terms of such Person’s organizational documents, joint venture agreements or shareholder agreements or similar contractual obligation;
- (e) any property or assets to the extent a security interest therein could result in material adverse tax consequences to Holdings, the Issuers, any direct or indirect parent entity of Holdings or any of the Issuers’ direct or indirect Subsidiaries, as determined in good faith by the Lead Issuer;
- (f) any lease, license, contract, agreement or other general intangible or any property subject to a purchase money security interest, Financing Lease Obligation or similar arrangement, in each case permitted under this Indenture, to the extent that a grant of a security interest therein would violate or invalidate such lease, license, contract, agreement or other general intangible, Financing Lease Obligations or purchase money arrangement or create a right of termination in favor of any other party thereto (other than a Grantor) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other applicable law notwithstanding such prohibition;

(g) those assets as to which the Bank Collateral Agent and the Lead Issuer reasonably agree that the cost or other consequence of obtaining such a security interest or perfection thereof are excessive in relation to the value afforded thereby;

(h) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted

thereby after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code of any applicable jurisdiction and other applicable law;

- (i) “intent-to-use” trademark applications prior to the filing and acceptance of a “Statement of Use” or “Amendment to Allege Use” with respect thereto;
- (j) assets subject to Liens securing Qualified Securitization Facilities permitted under this Indenture;
- (k) any segregated accounts or funds held or received on behalf of third parties (other than the Issuers or any Guarantor);
- (l) any equipment or other asset subject to Permitted Liens securing acquired debt permitted hereunder (limited to the acquired assets), sale and leaseback transactions, capital lease obligations, financing lease obligation or similar arrangement or other purchase money debt, if the contract or other agreement providing for such debt, sale and leaseback transaction or capital lease or financing lease obligation prohibits or requires the consent of any Person (other than the Issuers or any Guarantor) as a condition to the creation of any other security interest on such equipment or asset and, in each case, such indebtedness and prohibition or requirement is permitted under this Indenture;
- (m) any property or assets owned by any Foreign Subsidiary (unless such Subsidiary becomes a Guarantor), Unrestricted Subsidiary or any subsidiary which is not an Issuer or a Guarantor;
- (n) any accounts used solely as payroll and other employee wage and benefit accounts, tax accounts (including, without limitation, sales tax accounts) and any tax benefit accounts, escrow accounts, fiduciary or trust accounts and any funds or property held in such accounts;
- (o) to the extent pledges and security interests therein are prohibited or restricted by applicable law, Equity Interests in any subsidiary that is a broker-dealer, state chartered trust company, national trust company or thrift limited to trust powers;
- (p) Margin Stock;
- (q) voting Equity Interests in any Foreign Subsidiary that is a CFC or any FSHCO, in each case, representing more than 65% of the voting power of all outstanding Equity Interests of such CFC or FSHCO; and
- (r) so long as the Senior Secured Credit Facilities remain outstanding, any asset that is not pledged to secure obligations arising in respect of the Senior Secured Credit Facilities (whether pursuant to the terms of the Senior Secured Credit Facilities (and any related document) as a result of any determination made thereunder, or by amendment, waiver or otherwise).

*provided, however,* that Excluded Assets shall not include any assets that are pledged to secure obligations arising in respect of the Senior Secured Credit Facilities (whether pursuant to the terms of the credit agreement governing the Senior Secured Credit Facilities (and any related documents) or any amendment or otherwise).

**“Excluded Contribution”** means Net Cash Proceeds, marketable securities or Qualified Proceeds received by the Lead Issuer after the Issue Date from:

- (a) contributions to its common equity capital;

(b) dividends, distributions, fees and other payments from any Unrestricted Subsidiaries or joint ventures or Investments in entities that are not Restricted Subsidiaries; and

(c) the sale (other than to a Subsidiary of the Lead Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Lead Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Lead Issuer or any direct or indirect parent entity to the extent contributed as common equity capital to the Lead Issuer,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate, which are (or were) excluded from the calculation set forth in clause (B) of Section 4.07(a) hereof.

**"Excluded Subsidiary"** means "Excluded Subsidiary" (as defined in the Senior Secured Credit Facilities).

**"Existing Credit Agreement"** means the Credit Agreement, dated as of December 17, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) among Holdings and the other parties thereto.

**"fair market value"** means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Lead Issuer in good faith.

**"Financing Lease Obligation"** means an obligation that is required to be accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a financing or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

**"First Lien Intercreditor Agreement"** means that certain Closing Date Intercreditor Agreement, dated as of the Issue Date, among the Trustee, the administrative agent under the Senior Secured Credit Facilities, the Notes Collateral Agent and the Bank Collateral Agent (as it may be amended and/or supplemented from time to time).

**"First Lien Notes Obligations"** means Obligations in respect of the Notes, this Indenture, the Guarantees and the Security Documents relating to the Notes.

**"First Lien Obligations"** means, collectively, (1) the Senior Secured Credit Facility Obligations including Obligations under the Bilateral Letter of Credit Facilities, (2) the First Lien Notes Obligations and (3) each Series of Additional First Lien Obligations.

**"First Lien Representative"** means any duly authorized representative of any holders of First Lien Obligations, which representative is named as such in the First Lien Intercreditor Agreement or any joinder thereto.

**"First Lien Secured Parties"** means (1) the Senior Secured Credit Facility Secured Parties including the lenders party to the Bilateral Letter of Credit Facilities, (2) the Notes Secured Parties and (3) any Additional First Lien Secured Parties.

**“Fixed Charge Coverage Ratio”** means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the



event that such Person or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or re-deems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “**Fixed Charge Coverage Ratio Calculation Date**”), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock (in each case, including a *pro forma* application of the net proceeds therefrom), as if the same had occurred at the beginning of the applicable four-quarter period, subject, for the avoidance of doubt, to the paragraphs contained in Section

1.06 hereof. For the avoidance of doubt, the calculations made in connection with the calculation of the Fixed Charge Coverage Ratio, including *pro forma* and other adjustments contemplated by this definition shall be subject to the provisions described under Section 1.06.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations (as determined in accordance with GAAP), operational changes and Business Expansions that have been made by the Lead Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations, operational changes and Business Expansions (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Lead Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change or Business Expansion that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change or Business Expansion had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to an Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion or other transaction (including the Transactions), the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Lead Issuer or its Restricted Subsidiaries (and may include, for the avoidance of doubt, cost savings, operating expense reductions and synergies resulting from such Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion or other transaction (including the Transactions) which is being given *pro forma* effect) calculated in accordance with and subject to the limitations set forth in clause (viii) of the definition of “EBITDA.” If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Lead Issuer to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP. For

purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be

determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Lead Issuer may designate.

“**Fixed Charge Coverage Ratio Calculation Date**” has the meaning set forth in the definition of “Fixed Charge Coverage Ratio.”

“**Fixed Charges**” means, with respect to any Person for any period, the sum of, without duplication:

- (a) Consolidated Interest Expense of such Person for such period;
- (b) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (c) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

“**Foreign Subsidiary**” means any Subsidiary of the Lead Issuer that is not a Domestic Subsidiary.

“**FSHCO**” means any direct or indirect Subsidiary that owns no material assets other than Equity Interests of one or more Foreign Subsidiaries that are CFCs or Subsidiaries described in this definition.

“**GAAP**” means, at the election of the Lead Issuer, (1) the accounting standards and interpretations adopted by the International Accounting Standard Board, as in effect at the time of such election (“**IFRS**”) if the Lead Issuer’s financial statements are at such time prepared in accordance with IFRS or (2) generally accepted accounting principles in the United States of America, as in effect on the Issue Date (“**U.S. GAAP**”) if the Lead Issuer’s financial statements are at such time prepared in accordance with U.S. GAAP, it being understood that, for purposes of this Indenture, (a) all references to codified accounting standards specifically named in this Indenture under U.S. GAAP shall be deemed to refer to the corresponding accounting standard under IFRS, to the extent GAAP is elected to be IFRS (b) neither IFRS nor U.S. GAAP shall include the policies, rules and regulations of the SEC, the American Institute of Certified Public Accountants, the International Accounting Standards Board or any other applicable regulatory or governing body applicable only to public companies, and (c) any calculation or determination in this Indenture that requires the application of U.S. GAAP across multiple quarters need not be calculated or determined using the same accounting standard for each constituent quarter. For the avoidance of doubt, as of the Issue Date, GAAP shall mean U.S. GAAP until the Lead Issuer elects otherwise.

For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not (1) be treated as an incurrence of Indebtedness or (2) have the effect of rendering invalid any payment, Investment or other action made prior to the date of such election pursuant to Section 4.07 hereof or any incurrence of Indebtedness incurred prior to the date of such election pursuant to Section 4.09 hereof (or any other action conditioned

on the Lead Issuer and the Restricted Subsidiaries having been able to incur \$1.00 of additional Indebtedness) if such payment, Investment, incurrence or other action was valid under this Indenture on the date made, incurred or taken, as the case may be.

If there occurs a change in IFRS or U.S. GAAP, as the case may be, and such change would cause a change in the method of calculation of any term or measure used in this Indenture (an “**Account- ing Change**”), then the Lead Issuer may elect, as evidenced by a written notice of the Lead Issuer to the Trustee, that such term or measure shall be calculated as if such Accounting Change had not occurred.

“**Global Notes**” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A-1 hereto, issued in accordance with Section 2.01, 2.06(a) or 2.06(c) hereof.

“**Global Note Legend**” means the legend set forth in Section 2.06(h)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

“**Grantor**” means Holdings, the Issuers and any Subsidiary Guarantor.

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means the guarantee by any Guarantor of the Issuers’ Obligations under this Indenture and the Notes.

“**Guarantor**” means Holdings and each Subsidiary Guarantor.

“**Hedging Obligations**” means, with respect to any Person, the obligations of such Person under (1) any 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 agreements or 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 (2) 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.

“**Holder**” means the Person in whose name a Note is registered on the Registrar’s books. “**Holding Company**”

means any Person so long as such Person directly or indirectly holds 100%

of the total voting power of the Voting Stock of Holdings, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder or another Holding Company), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such Person.

**“Holdings Pledge Agreement”** means that certain Holdings Pledge Agreement, dated as of the Issue Date, among Holdings and the Notes Collateral Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

**“IFRS”** has the meaning set forth in the definition of “GAAP.”

“**Immediate Family Members**” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), the estates of such individual and such other individuals above and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation, trust or fund that is controlled by any of the foregoing individuals or any donor-advised foundation, trust or fund of which any such individual is the donor.

“**Indebtedness**” means, with respect to any Person, without duplication:

- (a) any indebtedness of such Person, whether or not contingent:
  - (i) representing the principal in respect of borrowed money;
  - (ii) representing the principal in respect of obligations evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);
  - (iii) representing the principal component in respect of obligations to pay the deferred and unpaid balance of the purchase price of any property (including Financing Lease Obligations), except (A) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business, (B) any earn-out obligations (x) until 60 days after such obligation becomes due and payable or (y) otherwise not treated as a liability on the balance sheet and (C) accruals for payroll and other liabilities accrued in the ordinary course of business; or
  - (iv) representing the net obligations under any Hedging Obligations,

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any direct or indirect parent of the Lead Issuer appearing upon the balance sheet of the Lead Issuer solely by reason of push-down accounting under GAAP shall be excluded;

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations of the type referred to in clause (a) of a third Person (whether or not such items would appear upon the balance sheet of such first Person), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(c) to the extent not otherwise included, the obligations of the type referred to in clause (a) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of any such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such third Person;

*provided* that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, (b) Non-Financing Lease Obligations, Qualified Securitization Facilities, straight-line leases, operating leases, or lease lease-back transactions, (c) obligations under any license, permit or other approval (or guarantees



given in respect of such obligations) incurred prior to the Issue Date or in the ordinary course of business or consistent with past practice, (d) in connection with the purchase by the Lead Issuer or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner, (e) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller,

(f) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (g) accrued expenses and royalties,

(h) Capital Stock and Disqualified Stock, (i) any obligations in respect of workers' compensation claims, retirement, post-employment or termination obligations (including pensions and retiree medical care), pension fund obligations or contributions or similar claims, or social security or wage taxes or contributions, (j) deferred or prepaid revenues, (k) any asset retirement obligations or (l) any liability for taxes; *provided, further*, that Indebtedness shall be calculated without giving effect to the effects of Financial Accounting Standards Board Accounting Standards Codification Topic No. 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

**"Indenture"** means this Indenture, as amended, supplemented or otherwise modified from time to time.

**"Independent Financial Advisor"** means an accounting, appraisal, investment banking firm or consultant of nationally or internationally recognized standing that is, in the good faith judgment of the Lead Issuer, qualified to perform the task for which it has been engaged.

**"Indirect Participant"** means a Person who holds a beneficial interest in a Global Note through a Participant.

**"Initial Notes"** has the meaning set forth in the recitals hereto.

**"Initial Purchasers"** means the initial purchasers of the Notes on the Issue Date. **"Intercompany License**

**Agreement"** means any cost sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, intellectual property rights transfer agreement, any related agreements or other similar agreements, in each case where all parties to such agreement are one or more of the Lead Issuer or a Restricted Subsidiary thereof.

**"Interest Payment Date"** means May 1 and November 1 of each year to stated maturity. **"Investment Grade**

**Event"** means (1) the Issuers have obtained a rating or, to the extent such Rating Agency will not provide a rating, an advisory or prospective rating from either Rating Agency that reflects an Investment Grade Rating with respect to the outstanding Notes after giving effect to the proposed release of the

Collateral securing the Notes; and (2) no Event of Default shall have occurred and be continuing with respect to the Notes.

“**Investment Grade Rating**” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or if the applicable securities are not then rated by Moody’s or S&P, an equivalent rating by any other Rating Agency.

**“Investment Grade Securities”** means:

- (a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (b) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among Holdings and its Subsidiaries;
- (c) investments in any fund that invests at least 90% of its assets in investments of the type described in clauses (a) and (b) which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (d) corresponding instruments in countries other than the United States of America customarily utilized for high quality investments.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and similar advances to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, in each case made in the ordinary course of business or consistent with past practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Lead Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of “Unrestricted Subsidiary” and Section 4.07 hereof:

- (a) *“Investments”* shall include the portion (proportionate to the Lead Issuer’s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Lead Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary;
- (b) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer; and
- (c) if the Lead Issuer or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any investment by the Lead Issuer or any Restricted Subsidiary in such Person remaining after giving effect thereto shall not be deemed to be an Investment at such time.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in Cash Equivalents by the Lead Issuer or a Restricted Subsidiary in respect of such Investment to the extent such amounts do not increase any other baskets under this Indenture.

**“Investors”** means (1) Carl C. Icahn and his siblings, his and their respective spouses and descendants (including stepchildren and adopted children) and the spouses of such descendants (including stepchildren and adopted

children) (collectively, the “Family Group”); (2) any trust, estate, partnership, corporation, company, limited liability company or unincorporated association or organization (each an “Entity” and collectively “Entities”) Controlled by one or more members of the Family Group, including without limitation any funds managed by any member of the Family Group that are acting in concert with

the Family Group; (3) any Entity over which one or more members of the Family Group, directly or indirectly, have rights that, either legally or in practical effect, enable them to make or veto significant management decisions with respect to such Entity, whether pursuant to the constituent documents of such Entity, by contract, through representation on a board of directors or other governing body of such Entity, through a management position with such Entity or in any other manner (such rights hereinafter referred to as “Veto Power”); (4) the estate of any member of the Family Group; (5) any trust created (in whole or in part) by any one or more members of the Family Group; (6) any individual or Entity who receives an interest in any estate or trust listed in clauses (4) or (5), to the extent of such interest; (7) any trust or estate, substantially all the beneficiaries of which (other than charitable organizations or foundations) consist of one or more members of the Family Group; (8) any organization described in Section 501(c) of the Code, over which any one or more members of the Family Group and the trusts and estates listed in clauses (4), (5) and (7) have direct or indirect Veto Power, or to which they are substantial contributors (as such term is defined in Section 507 of the Code); (9) any organization described in Section 501(c) of the Code of which a member of the Family Group is an officer, director or trustee; or (10) any Entity, directly or indirectly (a) owned or Controlled by or (b) a majority of the economic interests in which are owned by, or are for or accrue to the benefit of, in either case, any Person or Persons identified in clauses (1) through (9) above. For the purposes of this definition of Investors, (I) “Control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and (II) for the avoidance of doubt, in addition to any other Person or Persons that may be considered to possess Control, (x) a partnership shall be considered Controlled by a general partner or managing general partner thereof, (y) a limited liability company shall be considered Controlled by a managing member of such limited liability company and (z) a trust or estate shall be considered Controlled by any trustee, executor, personal representative, administrator or any other Person or Persons having authority over the control, management or disposition of the income and assets therefrom.

“**Issue Date**” means October 15, 2021.

“**Issuer’s Order**” means a written request or order signed on behalf of the Issuers by an Officer of each Issuer and delivered to the Trustee.

“**Junior Lien Collateral Agent**” means the Junior Lien Representative for the holders of any initial Junior Lien Obligations.

“**Junior Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit E hereto (which agreement in such form or with changes thereto permitted by Section 9.01 hereof the Notes Collateral Agent is authorized to enter into) entered into among the Notes Collateral Agent, the Bank Collateral Agent and the applicable Junior Lien Collateral Agent in connection with the incurrence of any Junior Lien Obligation, as it may be amended from time to time.

“**Junior Lien Obligations**” means the Obligations with respect to Indebtedness permitted to be incurred under this Indenture, which is by its terms intended to be secured by the Collateral with a Junior Lien Priority relative to the Notes; *provided* such Lien is permitted to be incurred under this Indenture; *provided, further*, that the holders of such Indebtedness or their Junior Lien Representative shall become party to the Junior Lien Intercreditor Agreement and any other applicable intercreditor agreements.

**“Junior Lien Priority”** means Indebtedness that is secured by a Lien on the Collateral that is junior in priority to the Liens on the Collateral securing the First Lien Note Obligations and is subject to a Junior Lien Intercreditor Agreement (it being understood that junior Liens are not required to rank equally and ratably with other junior Liens, and that Indebtedness secured by junior Liens may be secured by

Liens that are senior in priority to, or rank equally and ratably with, or junior in priority to, other Liens constituting junior Liens).

“**Junior Lien Representative**” means any duly authorized representative of any holders of Junior Lien Obligations, which representative is named as such in the Junior Lien Intercreditor Agreement or any joinder thereto.

“**Junior Lien Security Agreement**” means any security agreement covering a portion of the Collateral to be entered into by the Issuers, the Guarantors and a Junior Lien Representative.

“**Legal Holiday**” means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York. If a payment date is on a Legal Holiday, payment will be made on the next succeeding day that is not a Legal Holiday and no interest shall accrue for the intervening period.

“**Lien**” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

“**LTM EBITDA**” means EBITDA of the Lead Issuer and its Restricted Subsidiaries measured for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Lead Issuer are available, with such pro forma adjustments giving effect to such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations, operational changes, Business Expansions or other transaction, as applicable, since the start of such four quarter period and as are consistent with the pro forma adjustments set forth in the definition of “Fixed Charge Coverage Ratio.”

“**Management Stockholders**” means the persons listed as executive officers for purposes of Holdings’ filings with the SEC.

“**Market Capitalization**” means an amount equal to (a) the total number of issued and outstanding shares of common Equity Interests of the Lead Issuer (or any direct or indirect parent entity) on the date of the declaration of a Restricted Payment permitted pursuant to Section 4.07(b)(ix) hereof, multiplied by (b) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“**Master Agreement**” has the meaning set forth in the definition of “Hedging Obligations.” “**Material Real**

**Property**” means any fee-owned real property located in the United States that is owned by any Grantor and that has a fair market value in excess of \$15.0 million (at the Issue Date or, with respect to fee-owned real property acquired after the Issue Date, at the time of acquisition, in each case, as reasonably estimated by the Lead Issuer in good faith).

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.



“**Mortgage Policy**” has the meaning set forth in the definition of “Collateral Requirement.”

“**Mortgaged Property**” means each Material Real Property with respect to which a Mortgage is granted pursuant to the terms of this Indenture and/or the Security Documents.

“**Mortgages**” means collectively, the deeds of trust, trust deeds, deeds to secure debt, hypothecs and mortgages made by the Grantors in favor or for the benefit of the Notes Collateral Agent creating and evidencing a Lien on a Mortgaged Property to secure the First Lien Notes Obligations. Each Mortgage shall be in form and substance reasonably satisfactory to the Trustee and the Lead Issuer, and including such provisions as shall be necessary to conform such document to applicable local law and any other mortgages executed and delivered pursuant to the Security Documents, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“**Net Cash Proceeds**” means the aggregate Cash Equivalents proceeds received in respect of any Equity Offering, sale of Equity Interests or other applicable transaction, in each case net of underwriting fees or discounts in respect in such Equity Offering, sale or other transaction.

“**Net Proceeds**” means the aggregate Cash Equivalents proceeds received by the Lead Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any Cash Equivalents received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of (1) the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting, consulting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, other fees and expenses, including survey costs, title and recordation expenses and title insurance premiums, (2) taxes, including tax distributions paid pursuant to Section 4.07(b)(xx) hereof paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Indenture (including transfer taxes, deed or mortgage recording taxes and estimated taxes payable in connection with any repatriation of funds and after taking into account any available tax credits or deductions and any tax sharing arrangements), (3) amounts required to be applied to the repayment of principal, premium, if any, and interest on Senior Indebtedness or amounts required to be applied to the repayment of Indebtedness secured by a Lien on such assets and required (other than required by Section 4.10(b)(i) hereof) to be paid as a result of such transaction, (4) the pro rata portion of Net Proceeds thereof (calculated without regard to this clause (4)) attributable to minority interests and not available for distribution to or for the account of the Lead Issuer and its Restricted Subsidiaries as a result thereof, (5) any costs associated with unwinding any related Hedging Obligations in connection with such transaction, (6) any deduction of appropriate amounts to be provided by the Lead Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Lead Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, (7) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with such Asset Sale; *provided*, that upon the termination of that escrow (other than in connection with a payment in respect of any such adjustment or satisfaction of indemnities), Net Proceeds will be increased by any portion of funds in the escrow that are released to the Lead Issuer or any of its Restricted Subsidiaries and (8) the amount of any liabilities (other than Indebtedness in respect of the Senior Secured Credit Facilities and the Notes) directly associated

with such asset being sold and retained by the Lead Issuer or any of its Restricted Sub- sidiaries. Any non-cash consideration received in connection with any Asset Sale that is subsequently converted to cash shall become Net Proceeds only at such time as it is so converted.

**“Non-Financing Lease Obligation”** means a lease obligation 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, a straight-line or operating lease shall be considered a Non-Financing Lease Obligation.

**“Non-U.S. Person”** means a Person who is not a U.S. Person.

**“Notes”** means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. Unless the context requires otherwise, all references to “Notes” for all purposes of this Indenture shall include any Additional Notes that are actually issued and authenticated. The Initial Notes issued by the Issuers and any Additional Notes subsequently issued under this Indenture will be treated as a single class for all purposes under this Indenture, including waivers, amendments, redemptions and offers to purchase, except for certain waivers and amendments as set forth herein and except as may be required under Section 2.06(j)(xiv).

**“Notes Collateral Agent”** means U.S. Bank National Association, as collateral agent for the holders of the First Lien Notes Obligations under the Security Documents and any successor pursuant to the provisions of this Indenture and the Security Documents.

**“Notes Secured Parties”** means the Trustee, the Notes Collateral Agent and the Holders of the Notes.

**“Obligations”** means any principal, interest (including any interest, fees and expenses accruing on or subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees and expenses are an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

**“Offering Memorandum”** means the offering memorandum, dated October 7, 2021, relating to the sale of the Initial Notes.

**“Officer”** means the Chairman of the Board, any member of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President, Vice President or Assistant Vice President, the General Counsel, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person or any other officer of such Person designated by any such individuals. Unless otherwise specified, reference to an “Officer” means an Officer of the Lead Issuer.

**“Officer’s Certificate”** means a certificate signed on behalf of a Person by an Officer of such Person. Unless otherwise specified, reference to an “Officer’s Certificate” means a certificate signed on behalf of the Lead Issuer by an Officer of the Lead Issuer.

**“OID Legend”** means the legend required by Section 2.06(h)(iii).

“**Opinion of Counsel**” means a written opinion (which opinion may be subject to customary assumptions and exclusions) from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of, or outside counsel to, the Issuers or a Guarantor.

“**Participant**” means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“**Pari Passu Lien Priority**” means, relative to specified Indebtedness, having equal Lien priority on specified Collateral and subject to the First Lien Intercreditor Agreement.

“**Permitted Asset Swap**” means the substantially concurrent purchase and sale or exchange, including as a deposit for future purchases, of Related Business Assets or a combination of Related Business Assets and Cash Equivalents between an Issuer or any of the Issuers’ Restricted Subsidiaries and another Person; *provided* that any Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

“**Permitted Convertible Notes Offering**” means any offering by the Lead Issuer or any of the Restricted Subsidiaries after the Issue Date of unsecured convertible notes or debentures (including by means of being a co-obligor or guarantor of convertible notes or debentures issued by a direct or indirect parent of the Lead Issuer that are convertible or exchangeable solely into Qualified Equity Interests of Holdings); *provided* that such notes or debentures or guarantees are permitted to be incurred herein.

“**Permitted Holders**” means any of (i) each of the Investors, (ii) each of the Management Stockholders, (iii) any Person who is acting solely as an underwriter in connection with a public or private offering of Capital Stock of Holdings or any of its direct or indirect parent companies, acting in such capacity, (iv) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Holding Company, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided*, that in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (iii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of Holdings or any of its direct or indirect parent companies held by such group, (v) any Holding Company and (vi) any Permitted Plan. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made or waived in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“**Permitted Intercompany Activities**” means any transactions (A) between or among Holdings, the Lead Issuer and its Restricted Subsidiaries that are entered into in the ordinary course of business of Holdings, the Lead Issuer and its Restricted Subsidiaries and, in the good faith judgment of the Lead Issuer are necessary or advisable in connection with the ownership or operation of the business of Holdings, the Lead Issuer and its Restricted Subsidiaries, including, but not limited to, (a) payroll, cash management, purchasing, insurance and hedging arrangements; (b) management, technology and licensing arrangements; and (c) customer loyalty and rewards programs; and (B) between or among the Lead Issuer, its Restricted Subsidiaries and any Captive Insurance Subsidiary.

“**Permitted Investments**” means:

- (a) any Investment in the Lead Issuer or any of its Restricted Subsidiaries;

(b) any Investment in Cash Equivalents or Investment Grade Securities;

(c) any Investment by the Lead Issuer or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged directly or indirectly in a Similar Business if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Lead Issuer or a Restricted Subsidiary,

and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation or transfer;

(d) any Investment in securities or other assets, including earn-outs, not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 4.10(a) hereof or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or an Investment consisting of any extension, modification, replacement, reinvestment or renewal of any such Investment or binding commitment existing on the Issue Date; *provided* that the amount of any such Investment may be increased in such extension, modification, replacement, reinvestment or renewal only (i) as required by the terms of such Investment or binding commitment as in existence on the Issue Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (ii) as otherwise permitted under this Indenture;

(f) any Investment acquired by the Lead Issuer or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business or consistent with past practice;

(ii) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by the Lead Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable (including any trade creditor, supplier or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Lead Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(g) Hedging Obligations permitted under Section 4.09(b)(x) hereof;





(h) any Investment in a Similar Business having an aggregate fair market value taken together with all other Investments made pursuant to this clause (h) that are at that time outstanding not to exceed the greater of (a) \$100.0 million and (b) 17% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments; *provided, however*, that if any Investment pursuant to this clause (h) is made in any Person that is not a Restricted Subsidiary of the Lead Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (h);

(i) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Lead Issuer or any of its direct or indirect parent companies; *provided* that such Equity Interests will not increase the amount available for Restricted Payments the Cumulative Credit;

(j) guarantees of Indebtedness permitted under Section 4.09 hereof, performance guarantees and Contingent Obligations and the creation of Liens on the assets of the Issuers or any Restricted Subsidiary in compliance with Section 4.12 hereof;

(k) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.11(b) hereof (except transactions described in clauses (ii), (v), (x) and (xxiii) of Section 4.11(b) hereof);

(l) Investments consisting of (i) purchases or other acquisitions of inventory, supplies, material or equipment, (ii) the leasing, sub-leasing, licensing, sub-licensing, cross-licensing or contribution of intellectual property in the ordinary course of business or consistent with past practice or pursuant to joint marketing arrangements with other Persons or (iii) the contribution, assignment, licensing, sub-licensing or other Investment of intellectual property or other general intangibles pursuant to any Intercompany License Agreement and any other Investments made in connection therewith;

(m) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (m) that are at that time outstanding not to exceed the greater of (a) \$150.0 million and (b) 25% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments; *provided, however*, that if any Investment pursuant to this clause (m) is made in any Person that is not a Restricted Subsidiary of the Lead Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (m);

(n) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Lead Issuer are necessary or advisable to effect any Qualified Securitization Facility (including any

contribution of replacement or substitute assets to such subsidiary) or any repurchase obligation in connection therewith;

(o) loans and advances to, or guarantees of Indebtedness of, future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants not in excess of \$25.0 million outstanding at any one time;

(p) loans and advances to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (i) for business-related travel or entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with industry practices or (ii) to fund such Person's purchase of Equity Interests of the Lead Issuer or any direct or indirect parent company thereof or in any management equity vehicle so investing in such Equity Interests;

(q) advances, loans or extensions of trade credit in the ordinary course of business or consistent with past practice by the Lead Issuer or any of its Restricted Subsidiaries;

(r) any Investment in any Subsidiary or any joint venture in connection with inter-company cash management arrangements or related activities arising in the ordinary course of business or consistent with past practice;

(s) (i) Investments made as part of, or in connection with, the Transactions and (ii) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice;

(t) Investments made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client contacts;

(u) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with past practice;

(v) repurchases of the Notes;

(w) Investments in the ordinary course of business or consistent with past practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(x) Investments consisting of promissory notes issued by the Issuers or any Guarantor to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Lead Issuer or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Lead Issuer or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 4.07 hereof;

(y) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other

disputes with, customers and suppliers arising in the ordinary course of business or consistent with past practice or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(z) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Lead Issuer or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with past practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(aa) Investments made in connection with Permitted Intercompany Activities and related transactions;

(bb) Investments made after the Issue Date in joint ventures of the Lead Issuer or any of its Restricted Subsidiaries existing on the Issue Date;

(cc) Investments in joint ventures of the Lead Issuer or any of its Restricted Subsidiaries, taken together with all other Investments made pursuant to this clause (cc) that are at that time outstanding not to exceed the greater of (i) \$85.0 million and (ii) 14.0% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments;

(dd) Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of a Casualty Event;

(ee) earnest money deposits required in connection with any acquisition permitted under this Indenture (or similar Investments);

(ff) Investments to the extent required by applicable rules under the Exchange Act or by any governmental authority, including any Investment made in order to avoid any early warning or notice requirements under such rules or requirements;

(gg) contributions to a “rabbi” trust for the benefit of future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants or other service providers or other grantor trusts subject to claims of creditors in the case of bankruptcy of the Lead Issuer or any of its Restricted Subsidiaries;

(hh) Investments in or by any Subsidiary that is a broker-dealer, state chartered trust company, national trust company in connection with their “broker-dealer” business, including, without limitation, short-term equity positions maintained in its securities clearing business and margin loans to clients;

(ii) any other Investment, so long as, after giving pro forma effect to such Investment, the Consolidated Total Net Leverage Ratio shall be no greater than 2.25 to 1.00;

(jj) Investments in Foreign Subsidiaries in connection with cash pooling arrangements and cash management services entered into in the ordinary course of business; and

(kk) lease, utility and other similar deposits in the ordinary course of business.

For purposes of determining compliance with this definition, in the event that a proposed Investment (or a portion thereof) meets the criteria of clauses (a) through (kk) above, the Lead Issuer will be entitled to divide or classify or later divide or reclassify (based on circumstances existing on the date of such reclassification) such Investment (or a portion thereof) between such clauses (a) through (kk) in any manner that otherwise complies with this definition.

**“Permitted Liens”** means, with respect to any Person:

(a) pledges, deposits or security by such Person under workmen’s compensation laws, unemployment insurance, employers’ health tax, and other social security laws or similar legislation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business or consistent with past practice;

(b) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, materialmen’s, repairmen’s, mechanics’ and other similar Liens, in each case for sums not yet overdue for a period of more than 60 days or, if more than 60 days overdue, that are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(c) Liens for taxes, assessments or other governmental charges (including any Lien imposed by any pension authority or similar Liens) not yet overdue for a period of more than 60 days or not yet payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(d) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, re-lease, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers acceptances issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice;

(e) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including

minor defects and irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially interfere with the ordinary conduct of the business of the Lead Issuer or any of its Restricted Subsidiaries, taken as a whole, and exceptions on title policies insuring Liens granted on Mortgaged Properties or any other collateral;



(f) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (iv), (ix), (xiii), (xiv), (xxi), (xxviii), (xxv) or (xxiii) of Section 4.09(b) hereof; *provided* that (i) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock to be incurred pursuant to clause (iv) of Section 4.09(b) hereof extend only to the assets so purchased, leased, expanded, constructed, installed, replaced, repaired or improved (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof); *provided, further*, that individual financings of assets provided by one lender or group of lenders may be cross-collateralized to other financings of assets by such lender or group of lenders; (ii) Liens securing Obligations relating to any Indebtedness permitted to be incurred pursuant to clause (xiii) of Section 4.09(b) hereof relate only to Obligations relating to Refinancing Indebtedness that (x) is secured by Liens on all or a portion of the same assets or the same categories or types of assets as the assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) that secured the Indebtedness being refinanced or (y) extends, replaces, re-funds, refinances, renews or defeases Indebtedness incurred or Disqualified Stock or Preferred Stock issued under clauses (iii) (solely to the extent such Indebtedness was secured by a Lien prior to such refinancing), or (iv) of Section 4.09(b) hereof; (iii) Liens securing Indebtedness permitted to be incurred pursuant to Section 4.09(b)(xiv)(B) shall only be permitted if such Liens are limited to all or a part of the same property or assets, including Capital Stock acquired (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof), or of a Person acquired or merged or consolidated with or into the Lead Issuer or any Restricted Subsidiary, in any transaction to which such Indebtedness relates; (iv) Liens securing Indebtedness permitted to be incurred pursuant to Section 4.09(b)(xiv)(A) shall only be permitted if the Consolidated First Lien Net Leverage Ratio determined on a pro forma basis would be no greater than (x) 2.25 to 1.00 or (y) the Consolidated First Lien Net Leverage Ratio immediately prior thereto; (v) Liens securing Indebtedness permitted to be incurred pursuant to Section 4.09(b)(xxi) shall only extend to the assets subject to such vendor financing or the receivables of payables subject to such factoring (as the case may be); and (vi) Liens securing Indebtedness permitted to be incurred pursuant to clauses (xxiii) and (xxv) of Section 4.09(b) hereof shall only be permitted if such Liens extend only to the assets of Restricted Subsidiaries of the Lead Issuer that are not an Issuer or a Guarantor (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof);

(g) Liens existing on the Issue Date (excluding Liens securing the Senior Secured Credit Facilities), including Liens securing any Refinancing Indebtedness of any Indebtedness secured by such Liens;

(h) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided, further*, that such Liens may not extend to any other property or other assets owned by the Lead Issuer or any of its Restricted Subsidiaries;

(i) Liens on property or other assets at the time the Lead Issuer or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Lead Issuer or any of its Restricted Subsidiaries; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation; *provided, further*, that the Liens may not extend to any other property owned by the Lead Issuer or any of its Restricted Subsidiaries;

ies;

(j) Liens securing Obligations relating to any Indebtedness or other obligations of the Lead Issuer or a Restricted Subsidiary owing to the Lead Issuer or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;

(k) Liens securing (x) Hedging Obligations and (y) obligations in respect of Bank Products;

(l) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar trade obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(m) leases, sub-leases, licenses or sub-licenses granted to others in the ordinary course of business or consistent with past practice which do not materially interfere with the ordinary conduct of the business of the Lead Issuer or any of its Restricted Subsidiaries, taken as a whole;

(n) Liens arising from Uniform Commercial Code (or equivalent statute) financing statement filings regarding operating leases or consignments entered into by the Lead Issuer and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statute) financing statements or similar public filings;

(o) Liens in favor of an Issuer or any Guarantor;

(p) Liens on vehicles or equipment of the Lead Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business or consistent with past practice;

(q) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility or in connection with vendor financings and receivables programs in the ordinary course of business;

(r) Liens to secure any modification, refinancing, refunding, restatement, exchange, extension, renewal or replacement (or successive refinancing, refunding, restatements, exchange, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Permitted Lien referred to in the foregoing clauses (f), (g), (h) and (i) above, this clause (r) and clauses (mm) and (qq) below; *provided* that (i) such new Lien shall be limited to all or a part of the same assets or the same categories or types of assets as the assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) that secured the original Lien, and (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (f), (g), (h) and (i) above, this clause (r) and clauses (mm) and (qq) below at the time the original Lien became a Permitted Lien under this Indenture, and (B) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees or similar fees) and premiums (including tender premiums) and accrued and unpaid interest, related to such modification, refinancing, refunding, extension, renewal or replacement;

(s) deposits made or other security provided in the ordinary course of business or consistent with past practice to secure liability to insurance carriers;

(t) Liens securing obligations in an aggregate principal amount outstanding which does not exceed the greater of (a) \$200.0 million and (b) 33% of LTM EBITDA (in each case, determined as of the date of such incurrence) provided any Lien allocated to this clause (t) may be reallocated by the Lead Issuer such that it ceases to be deemed allocated for purposes of this clause (t) but is instead deemed incurred under clause (mm) from and after the first date which the Issuers or such Restricted Subsidiary could have incurred such Lien under clause (mm) at such date without reliance on this clause (t);

(u) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with past practice;

(v) Liens securing judgments for the payment of money not constituting an Event of Default under clause (v) of Section 6.01(a) hereof;

(w) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or consistent with past practice;

(x) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or consistent with past practice, and (iii) in favor of banking or other financial institutions arising as a matter of law or under general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and which are within the general parameters customary in the banking industry;

(y) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.09 hereof;

(z) Liens encumbering reasonable customary deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes;

(aa) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Lead Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Lead Issuer and its Restricted Subsidiaries or consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of the Lead Issuer or any of its Restricted Subsidiaries in the ordinary course of business or consistent with past practice;

(bb) Liens securing obligations owed by the Lead Issuer or any Restricted Subsidiary to any lender under the Senior Secured Credit Facilities or any Affiliate of such a lender in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds;

(cc) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(dd) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into by the Lead Issuer or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;

(ee) Liens solely on any cash earnest money deposits made by the Lead Issuer or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted by this Indenture;

(ff) ground leases in respect of real property on which facilities owned or leased by the Lead Issuer or any of its Subsidiaries are located;

(gg) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(hh) Liens on Capital Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(ii) Liens on the assets of non-guarantor Restricted Subsidiaries securing Indebtedness of such Subsidiaries that were permitted by the terms of this Indenture to be incurred;

(jj) Liens on (i) cash advances or Cash Equivalents in favor of (x) the seller of any property to be acquired in an Investment permitted under this Indenture to be applied against the purchase price for such Investment or (y) the buyer of any property to be disposed of to secure obligations in respect of indemnification, termination fee or similar seller obligations and (ii) consisting of an agreement to dispose of any property in a disposition, in each case, solely to the extent such Investment or disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(kk) any interest or title of a lessor, sub-lessor, franchisor, licensor or sub-licensor or secured by a lessor's, sub-lessor's, franchisor's, licensor's or sub-licensor's interest under leases or licenses entered into by the Lead Issuer or any of the Restricted Subsidiaries in the ordinary course of business or consistent with past practice or, with respect to intellectual property, software and other technology licenses that is not material to the conduct of the business of the Lead Issuer or its Restricted Subsidiaries, taken as a whole;

(ll) deposits of cash with the owner or lessor of premises leased and operated by the Lead Issuer or any of its Subsidiaries in the ordinary course of business of the Lead Issuer and such Subsidiary or consistent with past practice to secure the performance of the Lead Issuer's or such Subsidiary's obligations under the terms of the lease for such premises;

(mm) Liens securing Indebtedness secured by the Collateral so long as (i) if such Indebtedness is secured by the Collateral on a pari passu basis to the Liens securing the Obligations under the Notes, immediately after giving effect to the incurrence of the Indebtedness secured by such Liens and the use of proceeds thereof, the Consolidated First Lien Net Leverage Ratio on a pro forma basis is not greater than 3.25 to 1.00; provided that a representative acting on behalf of the holders of such Indebtedness shall have become party to the Junior Lien Intercreditor Agreement (if any) as a "Senior Representative" (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement), if applicable, and the First Lien Intercreditor

Agreement and (ii) if such Indebtedness is secured by the Collateral on a junior basis to the Liens securing the Obligations under the Notes, immediately after giving effect to the incurrence of the Indebtedness se-



cured by such Liens and the use of proceeds thereof, the Consolidated Secured Net Leverage Ratio on a pro forma basis is not greater than 4.00 to 1.00; provided that a representative acting on behalf of the holders of such Indebtedness shall have become party to the Junior Lien Intercreditor Agreement as a “Junior Priority Representative” (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement);

(nn) Liens securing obligations in respect of (1) Indebtedness and other Obligations permitted to be incurred under one or more Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of this Indenture to be incurred pursuant to Section 4.09(b)(i) and (2) obligations of the Lead Issuer or any Subsidiary in respect of any Bank Products or Hedging Obligation provided by any lender party to any Credit Facility or any Affiliate of such lender (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products are provided were entered into);

(oo) Liens on assets deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets if such sale is otherwise permitted under this Indenture;

(pp) Liens on any funds or securities held in escrow accounts or similar arrangements established for the purpose of holding proceeds from issuances of debt securities or incurrences of other Indebtedness by the Lead Issuer or any of its Restricted Subsidiaries issued after the Issue Date, together with any additional funds required in order to fund any payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance or incurrence of such Indebtedness), mandatory redemption or sinking fund payment on such debt securities or other Indebtedness;

(qq) Liens securing the Notes (other than any Additional Notes) and the related Guarantees'

(rr) Liens on assets securing any Indebtedness owed to any Captive Insurance Subsidiary by an Issuer or any Restricted Subsidiary; and

(ss) Liens on assets of any Subsidiary that is a broker-dealer, state chartered trust company or national trust company securing broker-dealer financing incurred in the ordinary course of business or consistent with past practice.

For purposes of this definition, the term “*Indebtedness*” shall be deemed to include interest on such Indebtedness. In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of incurrence or at a later date), the Lead Issuer in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this Indenture and such Permitted Lien shall be treated as having been made pursuant only to the clause or clauses of the definition of “Permitted Lien” to which such Permitted Lien has been classified or reclassified.

“**Permitted Plan**” means any employee benefits plan of the Lead Issuer or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

**“Person”** means any individual, corporation, limited liability company, partnership (including a limited partnership), joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

**“Pledged Intercompany Debt”** means all debt owing to the Issuers or any Subsidiary Guarantor from any Restricted Subsidiary.

**“Preferred Stock”** means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

**“primary obligations”** has the meaning set forth in the definition of “Contingent Obligations.” **“primary obligor”** has the meaning set forth in the definition of “Contingent Obligations.” **“Private Placement Legend”** means the legend set forth in Section 2.06(h)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

**“Purchase Money Obligations”** means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets, and whether acquired through the direct acquisition of such property or assets, or otherwise (including through the purchase of Capital Stock of any Person owning such property or assets).

**“QIB”** means a “qualified institutional buyer” as defined in Rule 144A.

**“Qualified Proceeds”** means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

**“Qualified Securitization Facility”** means any Securitization Facility (i) constituting a securitization financing facility that meets the following conditions: (A) the Board or management of the Lead Issuer or any direct or indirect parent entity shall have determined in good faith that such Securitization Facility is in the aggregate economically fair and reasonable to the Lead Issuer, and (B) all sales and/or contributions of Securitization Assets and related assets to the applicable Securitization Subsidiary are made at fair market value (as determined in good faith by the Lead Issuer) or (ii) constituting a receivables or payables financing or factoring facility.

**“Rating Agencies”** means Moody’s and S&P or if Moody’s or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Lead Issuer which shall be substituted for Moody’s or S&P or both, as the case may be.

**“Record Date”** means, for the interest payable on any applicable Interest Payment Date, the April 15 and October 15 (whether or not a Business Day) immediately preceding such Interest Payment Date.

**“Regulation S”** means Regulation S promulgated under the Securities Act.

**“Regulation S Global Note”** means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

**“Regulation S Permanent Global Note”** means a permanent Global Note, substantially in the form of Exhibit A-1, bearing the Global Note Legend, as applicable, and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the applicable Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the applicable Restricted Period.

“**Regulation S Temporary Global Note**” means a temporary Global Note, substantially in the form of Exhibit A-1 hereto, as the case may be, bearing the Global Note Legend, and the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of, and registered in the name of, the applicable Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

“**Regulation S Temporary Global Note Legend**” means the legend set forth in Section 2.06(h)(iv) hereof.

“**Related Business Assets**” means assets (other than Cash Equivalents) used or useful in a Similar Business or any securities of a Person received by the Lead Issuer or a Restricted Subsidiary in exchange for assets transferred by the Lead Issuer or a Restricted Subsidiary; *provided* that any such securities shall not be deemed to be Related Business Assets, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“**Responsible Officer**” means, when used with respect to the Trustee or Notes Collateral Agent, any officer within the corporate trust department of the Trustee, including any managing director, director, vice president, assistant vice president, assistant secretary, associate assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

“**Restricted Definitive Note**” means a Definitive Note bearing, or that is required to bear, the Private Placement Legend.

“**Restricted Global Note**” means a Global Note bearing, or that is required to bear, the Private Placement Legend.

“**Restricted Investment**” means an Investment other than a Permitted Investment.

“**Restricted Period**” means, in respect of any Note issued under Regulation S, the 40-day distribution compliance period as defined in Regulation S applicable to such Note.

“**Restricted Subsidiary**” means, with respect to any Person, at any time, any direct or indirect Subsidiary of such Person (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided* that upon an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “*Restricted Subsidiary*.” Unless the context otherwise requires, any references to Restricted Subsidiary refer to a Restricted Subsidiary of the Lead Issuer and shall include CSLS.

“**Rule 144**” means Rule 144 promulgated under the Securities Act. “**Rule 144A**”

means Rule 144A promulgated under the Securities Act. “**Rule 903**” means Rule

903 promulgated under the Securities Act. “**Rule 904**” means Rule 904 promulgated

under the Securities Act.

“**S&P**” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, and any successor to its rating agency business.

**“Sale and Lease-Back Transaction”** means any arrangement providing for the leasing by the Lead Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Lead Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing (whether accounted for under GAAP as a Financing Lease Obligation or otherwise).

**“SEC”** means the U.S. Securities and Exchange Commission, or any successor thereto. **“Secured**

**Indebtedness”** means any Indebtedness of the Lead Issuer or any of its Restricted Subsidiaries secured by a Lien.

**“Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Securitization Assets”** means the accounts receivable, royalty or other revenue streams and other rights to payment, other assets customarily included in a Securitization Facility that are related to any of the foregoing and any other assets subject to a Qualified Securitization Facility and the proceeds thereof.

**“Securitization Facility”** means any of one or more receivables, factoring or securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Lead Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) pursuant to which the Lead Issuer or any of its Restricted Subsidiaries sells or grants a security interest in its accounts receivable, payables or other Securitization Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable, payable or Securitization Assets to a Person that is not a Restricted Subsidiary.

**“Securitization Fees”** means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

**“Securitization Subsidiary”** means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

**“Security Agreement”** means that certain Security Agreement, dated as of the Issue Date, among the Issuers, the Guarantors and the Notes Collateral Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

**“Security Documents”** means, collectively, the First Lien Intercreditor Agreement, the Security Agreement, the Holdings Pledge Agreement, other security or intercreditor agreements relating to the Collateral and the Mortgages filed and recorded in appropriate jurisdictions where the Mortgaged Property is located to preserve and protect the Liens on the Collateral (including, without limitation, financing statements under the Uniform Commercial Code of the relevant states applicable to the Collateral), each for the benefit of the Notes Collateral Agent, as amended, amended and restated, modified, renewed or replaced from time to time.





**“Senior Indebtedness”** means:

(a) all Indebtedness of the Issuers or any Guarantor outstanding under the Senior Secured Credit Facilities and the Notes and related guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuers or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of the Issuers or any Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(b) all (x) Hedging Obligations (and guarantees thereof) and (y) obligations in respect of Bank Products (and guarantees thereof) owing to a lender under the Senior Secured Credit Facilities or any Affiliate of such lender (or any Person that was a lender or an Affiliate of such lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into); *provided* that such Hedging Obligations and obligations in respect of Bank Products, as the case may be, are permitted to be incurred under the terms of this Indenture;

(c) any other Indebtedness of the Issuers or any Guarantor permitted to be incurred under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Notes or any related Guarantee; and

(d) all Obligations with respect to the items listed in the preceding clauses (a), (b) and (c); *provided* that Senior Indebtedness shall not include:

(i) any obligation of such Person to the Lead Issuer or any of its Subsidiaries;

(ii) any liability for federal, state, local or other taxes owed or owing by such Person

(iii) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(iv) any Indebtedness or other Obligation of such Person which is subordinate or junior in right of payment to any other Indebtedness or other Obligation of such Person; or

(v) that portion of any Indebtedness which at the time of incurrence is incurred in violation of this Indenture.

**“Senior Secured Credit Facilities”** means the Credit Agreement, dated on or about the Issue Date, among the Issuers, the guarantors named therein and Bank of America, N.A., as administrative agent, collateral agent, swing line

lender and L/C issuer, and the other agents and lenders named therein, including any guarantees, collateral documents, instruments and agreements executed in connection there- with, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings, refinancings or replacements thereof and any one or more indentures, agreements, credit facilities or com- mercial paper facilities with banks or other institutional lenders or investors that replace, refund, supple- ment or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including

any such replacement, refunding or refinancing facility or indenture or agreement that increases the amount borrowable thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Section 4.09 hereof) or adds the Lead Issuer or any Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders.

“**Senior Secured Credit Facility Obligations**” means “Obligations” (as defined in the Senior Secured Credit Facilities).

“**Senior Secured Credit Facility Secured Parties**” means “Secured Parties” (as defined in the Senior Secured Credit Facilities).

“**Series**” means (a) with respect to the First Lien Secured Parties, each of (i) the Senior Secured Credit Facility Secured Parties (in their capacities as such), (ii) the Notes Secured Parties (in their capacity as such) and (iii) the Additional First Lien Secured Parties that become subject to the First Lien Intercreditor Agreement after the Issue Date that are represented by a common representative (in its capacity as such for such Additional First Lien Secured Parties) and (b) with respect to any First Lien Obligations, each of (i) the Senior Secured Credit Facility Obligations, (ii) the First Lien Notes Obligations and (iii) the Additional First Lien Obligations incurred pursuant to any applicable agreement, which, pursuant to any joinder agreement, are to be represented under the First Lien Intercreditor Agreement by a common representative (in its capacity as such for such Additional First Lien Obligations).

“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02, clauses(w)(1) or (2) of Regulation S-X promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date; provided that a Subsidiary (or group of Subsidiaries) shall not constitute a Significant Subsidiary if such Subsidiary’s or group of Subsidiaries’ revenue (excluding any revenue generated from Holdings, the Issuers and other Subsidiaries of the Issuers) represents less than 2.5% of the consolidated revenue of the Lead Issuer and its Restricted Subsidiaries, as reported in the most recent set of financial statements provided under the covenant described under Section 4.03.

“**Similar Business**” means (a) any business conducted or proposed to be conducted by the Lead Issuer or any of its Restricted Subsidiaries on the Issue Date, and any reasonable extension thereof, or (b) any business or other activities that are reasonably similar, ancillary, incidental, complementary, synergistic or related to, or a reasonable extension, development or expansion of, the businesses in which the Lead Issuer and its Restricted Subsidiaries are engaged or propose to be engaged on the Issue Date.

“**Subordinated Indebtedness**” means, with respect to the Notes,

(1) any Indebtedness of the Issuers which is by its terms subordinated in right of payment to the Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

“**Subsidiary**” means, with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contin-

gency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(b) any partnership, joint venture, limited liability company or similar entity of which:

(i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

For the avoidance of doubt, unless otherwise specified, any entity that is owned at a 50% or less level (as described above) shall not be a “*Subsidiary*” for any purpose under this Indenture, regardless of whether such entity is consolidated on the Lead Issuer’s or any Restricted Subsidiary’s financial statements. For all purposes under this Indenture, no pooled investment vehicle, investment company (or series thereof), collective investment scheme, investment fund, managed account or société d’investissement à capital variable for collective investment by bona fide third parties for which and for so long as the Lead Issuer or any of its Subsidiaries or Affiliates serves as general partner, managing member, investment manager, investment adviser or sub-adviser or sponsor, as applicable, shall be considered a “*Subsidiary*” for any purpose under this Indenture, regardless of whether such entity is consolidated on the Lead Issuer’s or any Restricted Subsidiary’s financial statements. Unless the context otherwise requires, any references to Subsidiary refer to a Subsidiary of the Lead Issuer.

“**Subsidiary Guarantor**” means each Restricted Subsidiary of the Lead Issuer, if any, that Guarantees the Notes in accordance with the terms of this Indenture; *provided* that upon release or discharge of such Restricted Subsidiary from its Guarantee in accordance with this Indenture, such Restricted Subsidiary ceases to be a Subsidiary Guarantor.

“**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 Obligation**” means, with respect to any Person, any obligation to pay or perform under any Swap Contract.

“**Taxes**” shall mean all present and future taxes, levies, imposts, deductions, charges, duties, assessments and withholdings and any charges of a similar nature (including interest, additions to tax and penalties with respect thereto) that are imposed by any government or other taxing authority.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Investors, the Lead Issuer or any of its (or their) Affiliates in connection with the Transactions (including payments to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants as change of control payments, severance payments, consent payments, special or retention bonuses and charges for repurchase or rollover, acceleration or payments of, or modifications to, stock option or other equity-based awards, expenses in connection with hedging transactions related to the Senior Secured Credit Facilities and any original issue discount or upfront fees), this Indenture, the Notes, the Security Documents, the Loan Documents (as defined in the Senior Secured Credit Facilities) and the transactions contemplated hereby and thereby.

“**Transactions**” means the issuance of the Notes and the Guarantees on the Issue Date, the borrowings under the Senior Secured Credit Facilities on or prior to the Issue Date, the refinancing of the Existing Credit Agreement, the payment of Transaction Expenses and other transactions contemplated thereby or in connection therewith or incidental thereto as described in the Offering Memorandum.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa- 77bbbb).

“**Trustee**” means U.S. Bank National Association, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“**Uniform Commercial Code**” or “**UCC**” means (i) the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or (ii) the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it applies to any item or items of Collateral. References in this Indenture and the other Security Documents to specific sections of the Uniform Commercial Code are based on the Uniform Commercial Code as in effect in the State of New York on the Issue Date. In the event such Uniform Commercial Code is amended or another Uniform Commercial Code described in clause (ii) is applicable, such section reference shall be deemed to be references to the comparable section in such amended or other Uniform Commercial Code.

“**Unrestricted Definitive Note**” means one of more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“**Unrestricted Global Note**” means a permanent Global Note, substantially in the form of Exhibit A-1 hereto, bearing the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the applicable Depository, representing Notes that do not bear the Private Placement Legend.

“**Unrestricted Subsidiary**” means:

(a) any Subsidiary of the Lead Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Lead Issuer, as provided below); and

(b) any Subsidiary of an Unrestricted Subsidiary.



The Lead Issuer may designate any Subsidiary of the Lead Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Lead Issuer or any Subsidiary of the Lead Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that either (a) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less or (b) if the Subsidiary to be so designated has total consolidated assets in excess of \$1,000, such designation complies with Section 4.07 hereof. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Lead Issuer as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, the Lead Issuer will be in Default of Section 4.09 hereof.

The Lead Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, (i) no Default shall have occurred and be continuing and (ii) (x) any outstanding Indebtedness of such Unrestricted Subsidiary would be permitted to be incurred by a Restricted Subsidiary under Section 4.09 hereof (including pursuant to clause (xiv) of Section 4.09(b) hereof treating such redesignation as an acquisition for the purpose of such clause) and shall be deemed to be incurred thereunder and (y) all Liens encumbering the assets of such Unrestricted Subsidiary would be permitted to be incurred by a Restricted Subsidiary under Section 4.12 hereof and shall be deemed to be incurred thereunder, in each case calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable reference period.

Any such designation by the Lead Issuer shall be notified by the Lead Issuer or the Issuers to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of the Lead Issuer or any direct or indirect parent of the Lead Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

**“U.S. Dollar Equivalent”** means with respect to any monetary amount in a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in The Wall Street Journal in the *“Exchange Rates”* column under the heading *“Currency Trading”* on the date two business days prior to such determination.

**“U.S. Government Securities”** means securities that are:

(a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to

any such U.S. Government Securities or a specific payment of principal of or interest on any such U.S. Government Securities held by such custodian for the account of the holder of such de- pository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by

the custodian in respect of the U.S. Government Securities or the specific payment of principal of or interest on the U.S. Government Securities evidenced by such depository receipt.

“**U.S. Person**” means a U.S. person as defined in Rule 902(k) under the Securities Act.

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(b) the sum of all such payments;

*provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being extended, replaced, refunded, refinanced, renewed or defeased (the “**Applicable Indebtedness**”), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable extension, replacement, refunding, refinancing, renewal or defeasance shall be disregarded.

“**Wholly Owned Subsidiary**” of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors’ qualifying shares and shares issued to foreign nationals as required by applicable law) shall at the time be owned by such Person and/or by one or more Wholly Owned Subsidiaries of such Person.

**Section 1.02. Other Definitions.**

<b><u>Term</u></b>	<b>Defined in Section</b>
“Acceptable Commitment” .....	4.10(b)
“Action” .....	12.07(v)
“Advance Offer” .....	4.10(c)
“Advance Portion” .....	4.10(c)
“Affiliate Transaction” .....	4.11(a)
“Alternate Offer” .....	4.14(k)
“Applicable AML Law”.....	13.17
“Applicable Premium Deficit” .....	8.04(a)
“Asset Sale Offer” .....	4.10(c)
“Authentication Agent”.....	2.02
“Authentication Order”.....	2.02
“CERCLA” .....	12.07(q)
“Change of Control Offer” .....	4.14
“Change of Control Payment” .....	4.14
“Change of Control Payment Date” .....	4.14(b)
“Collateral Advance Offer” .....	4.10(c)
“Collateral Advance Portion” .....	4.10(c)
“Collateral Asset Sale Offer” .....	4.10(c)



**Defined in Section**

**Term**

“Collateral Excess Proceeds” .....	4.10(c)
“Collateral Excess Proceeds Threshold” .....	4.10(c)
“Covenant Defeasance” .....	8.03
“Covenant Suspension Event”.....	4.17(a)
“Cumulative Credit” .....	4.07(a)(iv)(B)
“Declined Collateral Proceeds” .....	4.10(c)
“Declined Proceeds” .....	4.10(c)
“DTC” .....	2.03
“ERISA” .....	2.06(h)
“Event of Default” .....	6.01(a)
“Exchange” .....	4.19
“Excess Proceeds”.....	4.10(c)
“Excess Proceeds Threshold” .....	4.10(c)
“Foreign Disposition” .....	4.10(b)
“Increased Amount”.....	4.12
“Indemnified Parties” .....	7.06
“incur” and “incurrence”.....	4.09(a)
“Legal Defeasance” .....	8.02
“Note Register” .....	2.03
“Notice” .....	13.01
“Offer Amount”.....	3.08(b)
“Offer Period”.....	3.08(b)
“Pari Passu Indebtedness”.....	4.10(c)
“Paying Agent”.....	2.03
“Purchase Date” .....	3.08(b)
“Redemption Date” .....	3.01
“Refinancing Indebtedness” .....	4.09(b)(xiii)
“Refunding Capital Stock”.....	4.07(b)(ii)
“Registrar” .....	2.03
“Related Person” .....	12.07(b)
“Reserved Indebtedness Amount” .....	4.09(c)(vi)
“Restricted Payments”.....	4.07(a)
“Reversion Date” .....	4.17(c)
“Second Commitment”.....	4.10(b)
“Security Document Order” .....	12.07(r)
“Subject Lien” .....	4.12
“Successor Company”.....	5.01(a)
“Successor Person”.....	5.01(f)
“Suspended Covenants”.....	4.17(a)
“Suspension Date” .....	4.17(a)
“Suspension Period” .....	4.17(c)

**Section 1.03.** *Rules of Construction.* Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;

- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) the words “including,” “includes” and similar words shall be deemed to be followed by “without limitation”;
- (e) words in the singular include the plural, and in the plural include the singular;
- (f) “shall” and “will” shall be interpreted to express a command;
- (g) provisions apply to successive events and transactions;
- (h) references to sections of, or rules, forms or regulations under, the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, forms or regulations adopted by the SEC from time to time;
- (i) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture;
- (j) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;
- (k) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuers dated such date prepared in accordance with GAAP;
- (l) words used herein implying any gender shall apply to both genders;
- (m) 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”;
- (n) the principal amount of any Preferred Stock at any time shall be (i) the maximum liquidation value of such Preferred Stock at such time or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock at such time, whichever is greater;
- (o) where any notice, order, certification, filing or determination is required under this Indenture to be given or made (as the case may be) by the “Issuer” or “Issuers,” such notice, order, certification, filing or determination may be given or made (as the case may be) by the Lead Issuer instead; and



(p) Indebtedness or other obligations shall not be deemed to be “subordinated” to other Indebtedness or obligations due to such Indebtedness or other obligations being unsecured or secured by collateral by liens of lower priority to such other Indebtedness or obligations.

**Section 1.04.** *Acts of Holders.*

- (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Lead Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01 hereof) conclusive in favor of the Trustee and the Lead Issuer, if made in the manner provided in this Section 1.04.
- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.
- (c) The ownership of Notes shall be proved by the Note Register.
- (d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Lead Issuer in reliance thereon, whether or not notation of such action is made upon such Note.
- (e) The Lead Issuer may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Lead Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 10 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.
- (f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this Section 1.04(f) shall have the same effect as if given or taken by separate Holders of each such different part.
- (g) Without limiting the generality of the foregoing, a Holder, including DTC, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and any Person that is a Holder of a

Global Note, including DTC, may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depository's standing instructions and customary practices.

(h) The Lead Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of DTC to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 120 days after such record date.

**Section 1.05.** *Timing of Payment.* Notwithstanding anything herein to the contrary, if the date on which any payment is to be made pursuant to this Indenture or the Notes is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (*provided* such payment is made on such succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day and the amount of any such payment that is an interest payment will reflect accrual only through the original payment date and not through the next succeeding Business Day.

**Section 1.06.** *Certain Compliance Calculations.* For purposes of (i) determining compliance with any provision of this Indenture which requires the calculation of financial ratios or measures (including the Consolidated First Lien Net Leverage Ratio, the Fixed Charge Coverage Ratio or the Consolidated Total Net Leverage Ratio), (ii) determining compliance with representations, warranties, defaults or events of default or (iii) testing availability under baskets set forth in this Indenture (including baskets measured as a percentage of total assets or EBITDA or LTM EBITDA), in each case in connection with a specified transaction or event (each, a “**Specified Transaction**”), this Indenture shall include provisions to the effect that, at the option of the Lead Issuer, such determination may be made (1) at the time the definitive agreement with respect to such Specified Transaction has been signed, (2) at the time such Specified Transaction is consummated or (3) at the time an irrevocable notice of repayment of Indebtedness is issued in connection with such Specified Transaction; provided that, in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Specified Transaction prior to the earlier of (x) the date on which such Specified Transaction is consummated and (y) the date that the definitive agreement for such Specified Transaction is terminated, expires or passes, as applicable, without consummation of such Specified Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Specified Transaction.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on a ratio basket based on the Fixed Charge Coverage Ratio, Consolidated First Lien Net Leverage Ratio or Consolidated Total Net Leverage Ratio, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other basket (other than a ratio basket based on the Fixed Charge Coverage Ratio, Consolidated First Lien Net Leverage Ratio or Consolidated Total Net Leverage Ratio) on the same date. Each item of Indebtedness, Disqualified Stock or Preferred Stock that is incurred or issued, each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant Fixed Charge Coverage Ratio, Consolidated First Lien Net Leverage Ratio or Consolidated Total Net Leverage Ratio test.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued, any Lien is incurred or other

transaction is undertaken in reliance on a ratio basket based on the Fixed Charge Coverage Ratio, Consolidated First Lien Net Leverage Ratio or Consolidated Total Net Leverage Ratio, such ratio(s) shall be calculated without regard to the incurrence of any Indebtedness under any revolving facility or letter of credit facility immediately prior to or in connection therewith.

Any calculation or measure that is determined with reference to the Lead Issuer's financial statements (including, without limitation, EBITDA, Consolidated Interest Expense, Consolidated Net Income, Consolidated First Lien Net Leverage Ratio, Consolidated Total Net Leverage Ratio, Fixed Charge Coverage Ratio, Fixed Charges, and the Cumulative Credit may be determined with reference to the financial statements of a direct or indirect parent entity of the Lead Issuer instead, so long as such parent entity does not hold any material assets other than, directly or indirectly, the Equity Interests of the Lead Issuer (as determined in good faith by the Lead Issuer).

**Section 1.07.** *Trust Indenture Act.* Whenever this Indenture refers specifically to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. Unless specifically referred to in this Indenture, the Trust Indenture Act shall not apply to this Indenture. The interpretation of terms used in this Indenture that are not otherwise defined and are used or defined in the Trust Indenture Act shall not be influenced by the meanings ascribed to them by the Trust Indenture Act.

## ARTICLE 2 THE NOTES

### **Section 2.01.** *Form and Dating; Terms.*

(a) *General.* The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A-1 hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be issued in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

(b) *Global Notes.* Notes issued in global form shall be substantially in the form of Exhibit A-1 hereto, including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto. Notes issued in definitive form shall be substantially in the form of Exhibit A-1 hereto, but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto. Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Temporary Global Notes.* Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as Custodian for the Depositary and registered in the name of the Depositary, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided.



Following the termination of the applicable Restricted Period, the Regulation S Temporary Global Note Legend shall be deemed removed from the Regulation S Temporary Global Note, following which temporary beneficial interests in the Regulation S Temporary Global Note shall automatically become beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures.

The aggregate principal amount of a Regulation S Temporary Global Note and a Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Registrar, the Trustee and/or the Paying Agent and the applicable Depository or their respective nominees, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) *Terms.* The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors, the Agents and the Trustee, by their execution and delivery of this Indenture, or a supplemental indenture to this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Issuers pursuant to an Asset Sale Offer or Advance Offer, as the case may be, as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3 hereof.

Subject to compliance with Section 4.09 and Section 4.12 hereof, the Issuers may issue Notes from time to time ranking *pari passu* with the Initial Notes without notice to or consent of the Holders, and such Additional Notes shall be consolidated with and form a single class with the Initial Notes (except as otherwise provided for herein) and shall have the same terms as to status, redemption or otherwise as the Initial Notes, except that interest may accrue on the Additional Notes from their date of issuance (or such other date specified by the Lead Issuer); *provided, however*, that a separate CUSIP or ISIN will be issued for the Additional Notes, unless the Initial Notes and the Additional Notes are treated as fungible for U.S. federal income tax purposes. Any Additional Notes may be issued with the benefit of an indenture supplemental to this Indenture.

**Section 2.02.** *Execution and Authentication.* At least one Officer of the Issuers shall execute the Notes on behalf of the Issuers by manual, facsimile or electronic (including “.pdf”) signature.

If an Officer of an Issuer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A-1 hereto by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuer’s Order (an “**Authentication Order**”), authenticate and deliver the Initial Notes in the aggregate principal amount or amounts specified in such Authentication



Order. In addition, at any time, from time to time, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver any Additional Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes issued or increased hereunder.

The Trustee may appoint an authenticating agent (an “**Authentication Agent**”) acceptable to the Lead Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An Authentication Agent has the same rights as an Agent to deal with Holders or an Affiliate of the Lead Issuer.

**Section 2.03. Registrars, Transfer Agents and Paying Agents.** The Issuers shall maintain (i) one or more registrars with respect to the Notes where such Notes may be presented for registration (each, a “**Registrar**”), which shall be U.S. Bank National Association as of the date of this Indenture with respect to the Notes, (ii) one or more offices or agencies where the Notes may be presented for transfer or for exchange (each, a “**Transfer Agent**”), which shall be U.S. Bank National Association as of the date of this Indenture with respect to the Notes, and (iii) one or more offices or agencies where the Notes, as applicable, may be presented for payment (each, a “**Paying Agent**”), which shall be U.S. Bank National Association as of the date of this Indenture with respect to the Notes. The Registrar shall keep a register of the Notes (“**Note Register**”), and of their transfer and exchange and keep such Note Register in accordance with the rules and procedures of DTC. The registered Holder of a Note will be treated as the owner of such Note for all purposes and only registered Holders shall have rights under this Indenture and the Notes. The Issuers may appoint one or more co-registrars, one or more co-transfer agents and one or more additional paying agents. The term “*Registrar*” includes any co-registrar, the term “*Transfer Agent*” includes any co-transfer agent and the term “*Paying Agent*” includes any additional paying agents. The Issuers may change any Paying Agent, Transfer Agent or Registrar without prior notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fails to appoint or maintain another entity as Registrar, Transfer Agent or Paying Agent, the Trustee or an affiliate of the Trustee shall act as such. Holdings or any of its Subsidiaries may act as Paying Agent, Transfer Agent or Registrar.

The Issuers initially appoints The Depository Trust Company, its nominees and successors (“**DTC**”) to act as Depository with respect to the Global Notes. In acting hereunder and in connection with the Notes, the Transfer Agent, the Paying Agent and the Registrar shall act solely as agents of the Issuers and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder of the Notes.

The Issuers initially appoint the Trustee to act as the Registrar for the Notes and the Paying Agent and Transfer Agent for the Notes and to act as Custodian with respect to the Global Notes.

If any Notes are listed on an exchange and the rules of such exchange so require, the Issuers will satisfy any requirement of such exchange as to paying agents, registrars and transfer agents and will comply with any notice requirements required under such exchange in connection with any change of paying agent, registrar or transfer agent.

**Section 2.04. Notes Paying Agent to Hold Money in Trust.** The Issuers shall require any Paying Agent with respect to the Notes other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders of the Notes or the Trustee all money held by such Paying Agent for the payment of principal and premium, if any, or interest on the Notes, and will notify the Trustee in writing of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require the Paying Agent with respect to the Notes (other than the Trustee) to pay all money held by it to the Trustee. The Issuers at any time may require the Paying Agent with respect to the Notes (other than the Trustee) to pay all money held by it to the Trustee. Upon payment over to the

Trustee, the Paying Agent with respect to the Notes (if other than Holdings or a Subsidiary thereof or the Trustee) shall have no further liability for the money. If any of Holdings or a Subsidiary thereof acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by

it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuers, the Trustee shall serve as Paying Agent for the Notes.

**Section 2.05. *Holder Lists.*** The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

**Section 2.06. *Transfer and Exchange.***

(a) *Transfer and Exchange of Global Notes.* Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depository or to a successor thereto or a nominee of such successor thereto. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless, and, if applicable, subject to the limitation on issuance of Definitive Notes set forth in Section 2.06(d)(ii), (i) the Depository (x) notifies the Lead Issuer that it is unwilling or unable to continue as Depository for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act, and, in either case, a successor Depository is not appointed by the Lead Issuer within 120 days, (ii) the Lead Issuer, at its option, notifies the Trustee in writing that it elects to cause the issuance of Definitive Notes (although Regulation S Temporary Global Notes may not be exchanged for Definitive Notes prior to (A) the expiration of the applicable Restricted Period and (B) the receipt by the applicable Registrar of any certification of beneficial ownership required pursuant to Rule 903(b)(3)(ii)(B)), (iii) upon the request of a Holder if there shall have occurred and be continuing an Event of Default with respect to the Notes, or (iv) the Trustee has received a written request by or on behalf of the Depository to issue Definitive Notes. Upon the occurrence of any of the events described in clause (i), (ii), (iii) or (iv) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Sections 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the events described in clause (i), (ii), (iii) or (iv) above and pursuant to Section 2.06(d) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(c), (d) or (g) hereof.

(b) [Reserved]

(c) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes shall be effected through the applicable Depository in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer re-

restrictions set forth in the applicable Private Placement Legend; *provided* that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person other than pursuant to Rule 144A. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in a Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(c)(i).

(ii) [Reserved].

(iii) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(c)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depository to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; *provided* that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in a Regulation S Temporary Global Note prior to (x) the expiration of the applicable Restricted Period therefor and (y) the receipt by the Registrar of any certification of beneficial ownership required pursuant to Rule 903(b)(3)(ii)(B). Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(i) hereof.

(iv) [Reserved]

(v) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(c)(iii) hereof, and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B-1 or Exhibit B-2 hereto, as applicable, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B-1 or Exhibit B-2 hereto, as applicable, including the certifications in item (2) thereof.

(vi) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted

Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(c)(iii) hereof, and:

(A) such Notes are sold or exchanged pursuant to an effective registration statement under the Securities Act; or

(B) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (1) (a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this clause (B), if the Lead Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Lead Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to clause (A) or (B) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to clause (A) or (B) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(d) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(i) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events described in clause (i), (ii), (iii) or (iv) of Section 2.06(a) hereof, and, in each case, receipt by the Registrar of the following documentation:



(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Issuer, Holdings or any of their Subsidiaries, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (3)(b) thereof;  
or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (3)(c) thereof;

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(i) hereof, and the Issuers shall execute and, upon receipt of an Authentication Order, the Trustee shall authenticate and send to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall send such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(d)(i) (except transfers pursuant to clause (F) above) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) *Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes.* Notwithstanding Sections 2.06(d)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the applicable Restricted Period therefor and (B) the receipt by the Registrar of any certifications of beneficial ownership required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events described in clause (i), (ii), (iii) or (iv) of Section 2.06(a), and if the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (1)(b) thereof; or

(B) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subclause (iii), if the Lead Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Lead Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events described in clause (i), (ii), (iii) or (iv) of Section 2.06(a) hereof, and satisfaction of the conditions set forth in Section 2.06(c)(v) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(i) hereof, and the Issuers shall execute and, upon receipt of an Authentication Order, the Trustee shall authenticate and send to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(d)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depository and the Participant or Indirect Participant. The Trustee shall send such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(d)(iv) shall not bear the Private Placement Legend.

(e) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(i) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Issuer, Holdings or any of their Subsidiaries, a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B- 1 hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note and increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(ii) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(A) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (1)(c) thereof; or

(B) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subclause (ii), if the Lead Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Lead Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the applicable conditions of this Section 2.06(e)(ii), the Trustee shall cancel the Restricted Definitive Note and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to Section 2.06(e)(ii) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and,

upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(f) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(f), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer or exchange in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(f):

(i) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications required by item (3) thereof, if applicable.

(ii) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(A) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C-1 hereto, including the certifications in item (1)(d) thereof; or

(B) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subclause (ii), if the Lead Issuer so requests, an Opinion of Counsel in form reasonably acceptable to the Lead Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.



(iii) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the

Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(g) *[Reserved]*.

(h) *Legends*. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) *Private Placement Legend*.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

“THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”)), OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATIONS UNDER THE SECURITIES ACT (“REGULATION S”), (2) AGREES TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH NOTE PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD THEN IMPOSED BY RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION) ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) OUTSIDE THE UNITED STATES PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATIONS IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ OR THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.”



Except as permitted by subparagraph (B) below, each Global Note and Definitive Note issued in a transaction exempt from registration pursuant to Regulation S shall also bear the legend in substantially the following form:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES (AS DEFINED IN REGULATION S) OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S), EXCEPT IN COMPLIANCE WITH RULE 144A (“RULE 144A”) UNDER THE SECURITIES ACT (SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A) TO A PERSON THE HOLDER HEREOF REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A) (A “QIB”) THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QIB, IN EACH CASE TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE UPON RULE 144A, AND UPON DELIVERY OF THE CERTIFICATIONS REQUIRED BY THE INDENTURE REFERRED TO HEREIN.”

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (c)(vi), (d)(iii), (d)(iv), (e)(ii), (e)(iii), (f)(ii) or (f)(iii) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form (with appropriate changes in the last sentence of the first paragraph if DTC is not the Depository):

“THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTIFICATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(i) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUC-



CESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (“DTC”) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), OF A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (“SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.”

(iii) *Original Issue Discount Legend.* Each Note issued hereunder that has more than a de minimis amount of original issue discount for U.S. federal income tax purposes as determined by the Lead Issuer shall also bear the following legend on the face thereof:

“THE NOTES HAVE BEEN ISSUED WITH “ORIGINAL ISSUE DISCOUNT” (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST ADDRESSED TO [RELEVANT CONTACT PERSON AT CONDUENT], THE LEAD ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THE NOTES THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE NOTES, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTES AND (3) THE YIELD TO MATURITY OF THE NOTES.”

(iv) *Regulation S Temporary Global Note Legend.* The Regulation S Temporary Global Note shall bear a legend in substantially the following form:



““THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERN- ING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN).”

(i) *”Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note shall be re- turned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accord- ingly and an endorsement shall be made on such Global Note by the Trustee or, in the case of Global Notes, by the Depository, at the direction of the Trustee to reflect such reduction; and if the beneficial in- terest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or, in the case of Global Notes, by the De- positary, at the direction of the Trustee to reflect such increase.

(j) *General Provisions Relating to Transfers and Exchanges.*

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trus- tee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in ac- cordance with Section 2.02 hereof or at the Registrar’s request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require pay- ment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.08, 4.10, 4.14 and 9.04 hereof).

(iii) Neither the Registrar nor the Issuers shall be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the de- livery of a notice of redemption of the Notes to be redeemed under Section 3.03 hereof and ending at the close of business on the day such notice of redemption is sent, (B) to register the transfer of or to ex- change any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part, (C) to register the transfer or exchange of a Note between a Record Date and the next succeeding Interest Payment Date or (D) to register the transfer or exchange of any Notes tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Sale Offer.

(iv) Neither the Registrar nor the Issuers shall be required to register the transfer or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; *provided* that new Notes will only be issued in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.



(v) All Global Notes and Definitive Notes issued upon any registration of transfer or ex- change of Global Notes or Definitive Notes shall be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers shall deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to Section 4.02 hereof, the Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, subject to Section 2.06(a) hereof, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuers shall execute, and the Trustee shall authenticate and deliver, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile or e-mail.

(x) None of the Issuers, the Trustee or the Agents shall have any responsibility or obligation to any beneficial owner in a Global Note, a Participant, an Indirect Participant or other Person with respect to the accuracy of the records of the applicable Depository or their respective nominees or of any Participant, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant, Indirect Participant, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes and this Indenture shall be given or made only to or upon the order of the registered holders

(which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in a Global Note shall be exercised only through the Depository in the case of Global Notes, subject to the applicable procedures. The Issuers, the Trustee and the Agents shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository in the case of Global Notes with respect to their respective members, participants and any beneficial owners. The Issuers, the Trustee and the Agents shall be entitled to deal with the Depository in the case of Global Notes, and any nominee thereof, that is the registered holder of any Global Note for all purposes of this Indenture relating to such Global Note (including the payment of principal and premium), if any, and interest, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Note) as the sole holder of such Global Note and shall have no obligations to the beneficial owners thereof. None of the Issuers, Trustee or Agents shall have any responsibility or liability for any acts or omissions of the Depository in the case of Global Notes with respect to such Global Note, for the records of any such depository, including records in respect of beneficial ownership interests in respect of any such Global Note, for any transactions between the Depository and any Participant or between or among the Depository, any such Participant and/or any holder or owner of a beneficial interest in such Global Note, or for any transfers of beneficial interests in any such Global Note. All notices and communications to be given to the Holders of the Notes and all payments to be made to Holders under the Notes shall be given or made only to the registered Holders of the Notes (which shall be the Depository or its nominee). The rights of beneficial owners in

any Global Note shall be exercised only through the applicable Depositary subject to the applicable rules and procedures of such Depositary. The Trustee may rely and

shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(xi) Notwithstanding the foregoing, with respect to any Global Note, nothing herein shall prevent the Issuers, the Trustee, or any agent of an Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depository (or its nominee), as a Holder, with respect to such Global Note or shall impair, as between such Depository and owners of beneficial interests in such Global Note, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as Holder of such Global Note.

(xii) None of the Trustee, the Registrar or the Transfer Agent shall have any duty to monitor the Issuers' compliance with or have any responsibility with respect to the Issuers' compliance with any federal or state securities laws in connection with registrations of transfers and exchanges of the Notes. The Trustee, the Registrar and the Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Notes (including any transfers between or among the Depository's Participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation, as is expressly required by, and to do so if and when expressly required by, the terms of this Indenture or the Notes and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(xiii) The Issuers, the Trustee, the Registrar and the Transfer Agent reserve the right to require the delivery by any Holder or purchaser of a Note of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer of any Restricted Global Note or Restricted Definitive Note is being made in compliance with the Securities Act or the Exchange Act, or rules or regulations adopted by the SEC from time to time thereunder, and applicable state securities laws.

(xiv) Notwithstanding anything to the contrary in this Section 2.06, to the extent that any Notes are issued at a discount to their stated redemption price at maturity and bear the legend required by Section 2.06(h)(iii), each group of Notes bearing a given amount of original issue discount shall be treated as a separate series only for purposes of the transfer and exchange provisions of this Section 2.06 and may trade under a separate CUSIP number.

**Section 2.07. Replacement Notes.** If either (x) any mutilated Note is surrendered to the Trustee, the Registrar or the Issuers, or (y) the Lead Issuer and the Trustee receive evidence to their satisfaction of the ownership and destruction, loss or theft of any Note, then the Issuers shall issue and, the Trustee, upon receipt of an Authentication Order and satisfaction of any other requirements of the Trustee, shall authenticate a replacement Note. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of both (i) the Trustee to protect the Trustee and

(ii) the Issuers to protect the Issuers, the Trustee, any Agent and any Authentication Agent from any loss that any of them may suffer if a Note is replaced. The Issuers and the Trustee may charge the Holder for their expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

**Section 2.08.** *Outstanding Notes.* The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note

does not cease to be outstanding because an Issuer or a Guarantor or an Affiliate of an Issuer or a Guarantor holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture shall not be deemed to be outstanding for purposes hereof.

If the principal amount of any Note is considered paid under Section 4.01 hereof, such Note shall cease to be outstanding and interest thereon shall cease to accrue.

If a Paying Agent (other than the Issuer or a Guarantor or an Affiliate of an Issuer or a Guarantor) holds, on a Redemption Date or maturity date, money sufficient to pay Notes (or portions thereof) payable on that date, then on and after that date such Notes (or portions thereof) shall be deemed to be no longer outstanding (including for accounting purposes) and shall cease to accrue interest on and after such date.

**Section 2.09. *Treasury Notes.*** In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Lead Issuer or by any Subsidiary or Controlled Affiliate of the Lead Issuer shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to such pledged Notes and that the pledgee is not the Lead Issuer or a Guarantor or any Controlled Affiliate of the Lead Issuer.

**Section 2.10. *Temporary Notes.*** Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Lead Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

**Section 2.11. *Cancellation.*** The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any such Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the applicable Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of such cancelled Notes in its customary manner (subject to the record retention requirements of the Exchange Act). Certification of the cancellation of all cancelled Notes shall be delivered to the Lead Issuer at their written request therefor. The Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

**Section 2.12.** *Defaulted Interest.* If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at

the rate provided in the Notes and in Section 4.01 hereof. The Lead Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Lead Issuer shall fix or cause to be fixed any such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Lead Issuer shall promptly notify the Trustee of any such special record date. At least 15 days before any such special record date, the Lead Issuer (or, upon the written request of the Lead Issuer, the Trustee in the name and at the expense of the Issuers) shall send or cause to be sent to each Holder, with a copy to the Trustee, a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

**Section 2.13.** *CUSIP, ISIN or Common Code Numbers.* The Issuers in issuing the Notes may use CUSIP, ISIN, Common Code or other similar numbers (in each case, if then generally in use) and, if so, the Trustee shall use CUSIP, ISIN, Common Code or other similar numbers in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or exchange shall not be affected by any defect in or omission of such numbers. The Lead Issuer will as promptly as practicable notify the Trustee in writing of any change in the CUSIP, ISIN, Common Code or other similar numbers.

## ARTICLE 3 REDEMPTION

**Section 3.01.** *Notices to Trustee.* If the Issuers elect to redeem Notes pursuant to Section 3.07 hereof, the Lead Issuer shall furnish to the Trustee, at least two Business Days, in the case of Global Notes or five Business Days, in the case of Definitive Notes (unless a shorter notice shall be agreed to by the Trustee) before notice of redemption is required to be delivered or mailed to Holders pursuant to Section 3.03 hereof, an Officer's Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (b) the date of redemption (as such date may be delayed pursuant to Section 3.07(f) hereof, the "**Redemption Date**"), (c) the principal amount of the Notes to be redeemed and (d) the redemption price.

**Section 3.02.** *Selection of Notes to Be Redeemed or Purchased.* If less than all of the Notes are to be redeemed or purchased at any time, the selection of the Notes to be redeemed or purchased will be made by the Trustee by lot and/or otherwise in accordance with the Applicable Procedures. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 10 days nor more than 60 days (except as set forth in Section 3.07(f) hereof) prior to the Redemption Date by the Trustee from the outstanding Notes not previously called for redemption or purchase.



The Trustee shall promptly notify the Lead Issuer in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in minimum denominations of \$1,000 and integral multiples

of \$1,000 in excess thereof; no Notes in denominations of \$2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder shall be redeemed, even if not in a principal amount of at least \$2,000 of Notes. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

**Section 3.03.** *Notice of Redemption or Purchase.* Subject to Section 3.07(e) and Section 3.08 hereof, the Issuers shall send electronically, mail or cause to be mailed by first-class mail, postage pre-paid, notices of redemption or purchase at least 10 days but not more than 60 days (except as set forth in Section 3.07(f) hereof) before the Redemption Date to each Holder of the Notes to be redeemed or purchased at such Holder's registered address stated in the Note Register or otherwise in accordance with the Applicable Procedures, except that redemption or purchase notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with Article 8 or Article 11 hereof. Notices of redemption or purchase may, at the Issuers' discretion, be conditional. The Issuers may also provide in any redemption or purchase notice that payment of the redemption price and the performance of the Issuer's obligations with respect to such redemption or purchase may be performed by another Person.

The notice shall identify the Notes to be redeemed or purchased and shall state:

- (a) the Redemption Date;
- (b) the redemption or purchase price;
- (c) if any Note is to be redeemed or purchased in part only, the portion of the principal amount of that Note that is to be redeemed or purchased and, with respect to any Definitive Note, that after the Redemption Date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed or unpurchased portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder upon cancellation of the original Note; *provided* that new Notes will only be issued in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof;
- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption or purchase must be surrendered to the Paying Agent to collect the redemption or purchase price;
- (f) that, unless the Issuers default in making such redemption or purchase payment, interest on Notes called for redemption or purchase ceases to accrue on and after the Redemption Date subject to the satisfaction or waiver of any conditions set forth in such notice;
- (g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption or purchase are being redeemed or purchased;

(h) the CUSIP, ISIN, Common Code or similar number, if any, printed on the Notes being redeemed or purchased and that no representation is made as to the correctness or accuracy of any such CUSIP, ISIN, Common Code or similar number that is listed in such notice or printed on the Notes; and

(i) any condition to such redemption or purchase.

In addition, any notice of redemption or purchase may include additional information, including any information pursuant to Section 3.07(f) hereof.

At the Issuers' request, the Trustee shall give the notice of redemption or purchase in the Issuers' name and at its expense; *provided* that the Lead Issuer shall have delivered to the Trustee, at least two Business Days, in the case of Global Notes, or five Business Days, in the case of Definitive Notes, before notice of redemption or purchase is required to be delivered electronically, mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

If the Notes are listed on an exchange, for so long as the Notes are so listed and the rules of such exchange so require, the Lead Issuer shall notify the exchange of any such redemption or purchase and, if applicable, of the principal amount of any Notes outstanding following any partial redemption or purchase of Notes.

**Section 3.04.** *Effect of Notice of Redemption or Purchase.* A notice of redemption or purchase, if delivered electronically, mailed or caused to be mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holder of any Note designated for redemption or purchase in whole or in part shall not affect the validity of the proceedings for the redemption or purchase of any other Note. Notes or portions of Notes called for redemption or purchase shall become due and payable on the Redemption Date, subject to satisfaction or waiver of any conditions specified in the notice. Subject to Section 3.05 hereof, on and after the Redemption Date, unless the Issuers default in the payment of the redemption or purchase price, interest shall cease to accrue on the Notes called for redemption or purchase.

**Section 3.05.** *Deposit of Redemption Price.*

(a) Prior to noon (New York City time) on the Redemption Date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued and unpaid interest on all Notes to be redeemed on that Redemption Date; *provided*, however, that to the extent any such funds are received by the Paying Agent from the Issuers after such time on such due date, such funds will be distributed to such Persons within one Business Day of receipt thereof. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed.

(b) If the Issuers comply with the provisions of the preceding clause (a), on and after the Redemption Date, unless the Issuers default in the payment of the redemption price and subject to the satisfaction or waiver of any conditions set forth in the applicable notice of redemption, interest shall cease to accrue on the Notes called for redemption. If a Note is redeemed on or after an applicable Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the Redemption Date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date in accordance with Applicable Procedures. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the Redemption Date until such principal is paid, and to the extent lawful on any interest accrued to the Redemption Date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.



**Section 3.06. Notes Redeemed in Part.** Upon surrender of a Definitive Note that is redeemed in part, the Issuers shall issue and upon receipt of a Company Order, the Trustee shall authenticate for the Holder, at the expense of the Issuers, a new Note equal in principal amount to the unredeemed portion of the Note surrendered representing the same indebtedness to the extent not redeemed; *provided* that each new Note will be in a minimum principal amount of \$2,000 and any integral multiple of \$1,000 in excess thereof. It is understood that, notwithstanding anything to the contrary in this Indenture, only an Authentication Order and an Officer’s Certificate and not an Opinion of Counsel are required for the Trustee to authenticate such new Note.

**Section 3.07. Optional Redemption.**

(a) Except as set forth in clauses (b), (d) and (e) of this Section 3.07, the Notes will not be redeemable at the Issuers’ option prior to November 1, 2024 (the “**First Call Date**”).

(b) At any time prior to the First Call Date, the Issuers may, at their option and on one or more occasions, redeem all or a part of the Notes, upon notice in accordance with Section 3.03 hereof, at a redemption price equal to the sum of (A) 100.0% of the principal amount of the Notes redeemed, *plus* (B) the Applicable Premium as of the Redemption Date, plus (C) accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date falling prior to or on the Redemption Date.

(c) At any time on and after the First Call Date, the Issuers may, at their option and on one or more occasions, redeem all or a part of the Notes, upon notice in accordance with Section 3.03 hereof, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, *plus* accrued and unpaid interest, if any, thereon to, but excluding, the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date falling prior to or on the Redemption Date, if redeemed during the twelve- month period beginning on November 1 of each of the years indicated below:

Year	Notes Redemption Price
2024	103.000%
.....	
2025	101.500%
.....	
2026 and thereaf- ter	100.000%
.....	

(d) At any time prior to the First Call Date, the Issuers may, at their option and on one or more occasions, redeem an aggregate principal amount of Notes not to exceed the amount of the Net Cash Proceeds received by the Lead Issuer from one or more Equity Offerings or a contribution to the Lead Issuer’s common equity capital made with the Net Cash Proceeds of one or more Equity Offerings, upon notice in accordance with Section 3.03 hereof, at a redemption price equal to (i) 106.000% of the aggregate principal amount of the Notes redeemed, plus (ii) accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest

Payment Date falling prior to or on the Redemption Date; *provided* that (A) the amount redeemed shall not exceed 40% of the aggregate principal amount of the Notes issued under this Indenture (including any Additional Notes); (B) at least 50% of the aggregate

principal amount of the Notes originally issued under this Indenture on the Issue Date remains outstanding immediately after the occurrence of each such redemption (unless all Notes are redeemed substantially concurrently); and (C) each such redemption occurs within 180 days of the date of closing of the applicable Equity Offering. The aggregate principal amount of the Notes that may be redeemed pursuant to this Section 3.07(d) cannot exceed the aggregate Net Cash Proceeds from the relevant Equity Offerings.

(e) Notwithstanding the foregoing, in connection with any tender offer, Change of Control Offer, Alternate Offer or Asset Sale Offer for the Notes, if Holders of not less than 90% in aggregate principal amount of the then outstanding Notes validly tender and do not validly withdraw such Notes in such offer and the Issuers, or any third party making such offer in lieu of the Issuers, purchases all of the Notes validly tendered and not validly withdrawn by such Holders, the Issuers or such third party will have the right upon not less than 10 days nor more than 60 days' prior notice, given not more than 60 days following such purchase date, to redeem all Notes that remain outstanding following such purchase at a price equal to the price offered to each other Holder in such offer (which may be less than par) plus, to the extent not included in the offer payment, accrued and unpaid interest, if any, thereon, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the Redemption Date. For the avoidance of doubt, in determining whether the Holders of at least 90% of the aggregate principal amount of the then outstanding Notes have validly tendered and not validly withdrawn Notes in a tender offer, Change of Control Offer, Alternate Offer or Asset Sale Offer, as applicable, Notes owned by an Affiliate of the Issuers or by funds controlled or managed by any Affiliate of the Issuers, or any successor thereof, shall be deemed to be outstanding for the purposes of such tender offer, Change of Control Offer, Alternate Offer or Asset Sale Offer, as applicable.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. Notice of any redemption or offer to purchase and the offer to purchase, whether in connection with an Equity Offering, Change of Control, Alternate Offer, Asset Sale Offer or other transaction or event or otherwise, may, at the Issuers' discretion, be given prior to the completion or occurrence thereof, and any such redemption, offer to purchase or notice may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion or occurrence of the related Equity Offering, Change of Control, Asset Sale or other transaction or event, as the case may be. The Issuers may redeem Notes pursuant to one or more of the relevant provisions in this Indenture, and a single notice of redemption may be delivered with respect to redemptions made pursuant to different provisions. Any such notice may provide that redemptions made pursuant to different provisions will have different Redemption Dates. In addition, if such redemption or offer to purchase is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuers' discretion, the redemption or repurchase date may be delayed, from time to time, until such time (including more than 60 days after the date the notice of redemption or offer to purchase was sent) as any or all such conditions shall be satisfied (or waived by the Issuers in their sole discretion), or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuers in their sole discretion) by the redemption or purchase date, or by the redemption or purchase date so delayed, or that such notice or offer may be rescinded at any time in the Issuers' sole discretion if the Issuers determine that any or all of such conditions will not be satisfied or waived. For the avoidance of doubt, if any redemption or repurchase date shall be delayed pursuant to this Section 3.07 and the terms of the applicable notice of redemption or repurchase, such redemption or repurchase date as so delayed may occur at any time after the original redemption or repurchase date set forth in the applicable notice of redemption or repurchase and after the satisfaction of any applicable conditions precedent, including, without limitation, on a date that is less than 10 days after the original redemption or repurchase date or the redemption or



repurchase date so delayed and more than 60 days after the date of the applicable notice of redemption or repurchase. In addition, the Issuers may provide in such

notice or offer to purchase that payment of the redemption or purchase price and performance of the Issuers' obligations with respect to such redemption or offer to purchase may be performed by another Person.

(g) The Issuers, Holdings, its direct and indirect equityholders, including the Investors, any of its Subsidiaries and their respective Affiliates and members of management may acquire the Notes by means other than a redemption pursuant to this Article 3, whether by tender offer, open market purchases, negotiated transactions or otherwise.

(h) Neither the Trustee nor any Agent shall have any duty to calculate or verify the calculation of the Applicable Premium.

**Section 3.08.** *Offers to Repurchase by Application of Excess Proceeds.*

(a) In the event that, pursuant to Section 4.10 hereof, the Issuers shall be required to commence a Collateral Asset Sale Offer or an Asset Sale Offer, or if the Issuers shall elect to commence a Collateral Advance Offer or Advance Offer, the Issuers shall follow the procedures specified below.

(b) The Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Issuers shall apply all Collateral Excess Proceeds or Excess Proceeds, as the case may be (the "Offer Amount"), to the purchase of Notes and, if required or permitted by the terms thereof, to other First Lien Obligations and Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral) (in the case of Collateral Excess Proceeds) or to any other Pari Passu Indebtedness (in the case of Excess Proceeds) (on a pro rata basis, if applicable, with adjustments as necessary so that no Notes, other First Lien Obligations, Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral) or Pari Passu Indebtedness, as the case may be, will be repurchased in part in an unauthorized denomination), or, if less than the Offer Amount has been tendered, all Notes and other First Lien Obligations and Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral) (in the case of Collateral Excess Proceeds), or all Notes and any other Pari Passu Indebtedness (in the case of Excess Proceeds), in each case, tendered in response to the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, up to but excluding the Purchase Date shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be.

(d) Upon the commencement of a Collateral Asset Sale Offer, a Collateral Advance Offer, an Asset Sale Offer or an Advance Offer, as the case may be, the Lead Issuer shall send, electronically or by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be. The Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance

Offer, as the case may be, shall be made to all Holders and, if required or permitted by the terms thereof, holders of other First Lien Obligations and Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral) (in the case of Collateral Excess Proceeds) or any other Pari Passu Indebtedness (in the case of Excess Proceeds). The notice, which shall govern the terms of the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, shall state:

- (i) that the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, is being made pursuant to this Section 3.08 and Section 4.10 hereof and the length of time the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, shall remain open;
- (ii) the Offer Amount, the purchase price and the Purchase Date;
- (iii) that any Note not tendered or accepted for payment shall continue to accrue interest;
- (iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, shall cease to accrue interest on and after the Purchase Date;
- (v) that any Holder electing to have less than all of the aggregate principal amount of its Notes purchased pursuant to a Collateral Asset Sale Offer, a Collateral Advance Offer, an Asset Sale Offer or an Advance Offer, as the case may be, may elect to have Notes purchased in integral multiples of \$1,000;
- (vi) that Holders electing to have a Note purchased pursuant to any Collateral Asset Sale Offer, Collateral Advance Offer, Asset Sale Offer or Advance Offer, as the case may be, shall be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Note completed, or transfer such Note by book-entry transfer, to the Lead Issuer, the applicable Depository, if appointed by the Lead Issuer, or a Paying Agent at the address specified in the notice at least two Business Days before the Purchase Date;
- (vii) that Holders shall be entitled to withdraw their election if the Lead Issuer, the applicable Depository or the applicable Paying Agent, as the case may be, receives, not later than the close of business on the tenth Business Day prior to the expiration date of the Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;
- (viii) that, if the aggregate principal amount of Notes and, if applicable, other First Lien Obligations and Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral) (in the case of Collateral Excess Proceeds) or any other Pari Passu Indebtedness (in the case of Excess Proceeds), in each case, surrendered by the holders thereof exceeds the Offer Amount (or, in the case of an Collateral Advance Offer or an Advance Offer, the Collateral Advance Portion or Advance Portion, respectively), the Issuer shall purchase such Notes

(subject to applicable procedures of the Depositary as to Global Notes) and such other First Lien Obligations, other Obligations or Pari Passu Indebtedness, as the case may be, on a pro rata basis based on the aggre-

gate principal amount (or accreted value, if applicable) of the Notes or such other First Lien Obligations, other Obligations or Pari Passu Indebtedness, as the case may be, tendered (with such adjustments as may be deemed appropriate by the Lead Issuer so that only Notes in integral multiples of \$1,000 are purchased);

(i) that Holders whose certificated Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased; *provided* that new Notes will only be issued in denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof; and

(ii) that, if applicable, the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, is subject to conditions precedent pursuant to Section 3.07(f) hereof, as set forth in such notice.

The notice, if delivered electronically or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (i) the notice is delivered or mailed in a manner herein provided and (ii) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect.

(e) On or before the Purchase Date, the Issuers shall, to the extent lawful, (1) accept for payment, on a pro rata basis as described in clause (d)(viii) of this Section 3.08, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted, together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuers, the applicable Depository or the applicable Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuers for purchase, and the Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, only an Officer's Certificate and not an Opinion of Counsel is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; *provided*, that each such new Note shall be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Lead Issuer shall announce the results of the Collateral Asset Sale Offer, the Collateral Advance Offer, the Asset Sale Offer or the Advance Offer, as the case may be, on or as soon as practicable after the Purchase Date or the website or online system maintain pursuant to Section 4.03(a) hereof.

(g) Prior to noon (New York City time) on the Purchase Date, the Issuers shall deposit with the Trustee or with the applicable Paying Agent money sufficient to pay the purchase price of and accrued and unpaid interest on all Notes to be purchased on that Purchase Date; *provided*, however, that to the extent any such funds are received by the Paying Agent from the Issuer after such time on such due date, such funds will be distributed to such Persons within one

Business Day of receipt thereof. The Trustee or the applicable Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or

the applicable Paying Agent by the Issuers in excess of the amounts necessary to pay the purchase price of, and accrued and unpaid interest on, all Notes to be redeemed.

Other than as specifically provided in this Section 3.08 or Section 4.10 hereof, any purchase pursuant to this Section 3.08 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof, and references therein to “redeem,” “redemption,” “Redemption Date” and similar words shall be deemed to refer to “purchase,” “repurchase,” “Purchase Date” and similar words, as applicable.

**Section 3.09. Mandatory Redemption.** The Issuers shall not be required to make any mandatory redemption or sinking fund payment with respect to the Notes.

#### ARTICLE 4 COVENANTS

**Section 4.01. Payment of Notes.** The Issuers shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and this Indenture. Principal and premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuers or a Guarantor or an Affiliate of the Issuers or a Guarantor, holds as of noon (New York City time) on the due date, with respect to the Notes, money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal and premium, if any, and interest then due; *provided*, however, that to the extent any such funds are received by the Paying Agent from the Issuer after such times on such due date, such funds will be distributed to such Persons within one Business Day of receipt thereof.

The Paying Agent shall not be obliged to make any payment until such time as it has received sufficient funds in order to make such payment.

The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; the Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

**Section 4.02. Maintenance of Office or Agency.** The Issuers shall maintain the offices or agencies (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or Transfer Agent) required under Section 2.03 hereof where Notes may be surrendered for registration of transfer or for exchange or presented for payment and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Lead Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Issuers for the purpose of effecting service of legal process against the Issuers or any Guarantor.

The Lead Issuer may also from time to time designate one or more other offices or agencies



where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain such offices or agencies as required by Section 2.03 hereof for such purposes. The Lead Issuer shall give prompt written notice to the Trustee of any such designation or re- scission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office as such offices or agencies of the Issuers in accordance with Section 2.03 hereof.

**Section 4.03. Reports and Other Information.**

(a) So long as any Notes are outstanding, the Lead Issuer shall have its annual consolidated financial statements audited by a nationally recognized firm of independent auditors. In addition, after the Issue Date, so long as any Notes are outstanding, the Lead Issuer shall furnish to the Holders of the Notes the following reports:

(1) (x) all annual and quarterly financial statements substantially in forms that would be required to be contained in a filing with the SEC on Forms 10-K and 10-Q of the Lead Issuer, if the Lead Issuer were required to file such forms, plus a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” substantially consistent with the section in the Offering Memorandum; (y) with respect to the annual and quarterly information, a presentation of “Pro Forma Adjusted EBITDA” of the Lead Issuer substantially consistent with the presentation thereof in the Offering Memorandum and derived from such financial information; and (z) with respect to the annual financial statements only, a report on the annual financial statements by the Lead Issuer’s independent registered public accounting firm; and

(2) substantially the same information that would be required to be contained in filings with the SEC on Form 8-K under Items 1.01, 1.02, 1.03, 2.01 (only with respect to acquisitions that are “significant” at the 20% or greater level pursuant to clauses (1) and (2) of the definition of “Significant Subsidiary” under Rule 1-02 of Regulation S-X only), 4.01, 4.02(a) and (b), 5.01 and 5.02(b) (with respect to the principal executive officer, president, principal financial officer, principal accounting officer and principal operating officer only) and (c) (other than with respect to information otherwise required or contemplated by subclause (3) of such Item or by Item 402 of Regulation S-K) as in effect on the Issue Date if the Lead Issuer were required to file such reports;

*provided, however,* that (A) no such report shall be required to include as an exhibit, or to include a summary of the terms of, any employment or compensatory arrangement, agreement, plan or understanding between the Lead Issuer (or any of its direct or indirect parent entities or its Subsidiaries) and any director, manager or officer, of the Lead Issuer (or any of its direct or indirect parent entities or its Subsidiaries), (B) the Lead Issuer shall not be required to make available any information regarding the occurrence of any of the events set forth in clause (2) above if the Lead Issuer determines in its good faith judgment that the event that would otherwise be required to be disclosed is not material to the Holders of the Notes or the business, assets, operations, financial positions or prospects of the Lead Issuer and its Restricted Subsidiaries taken as a whole, (C) no such report will be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any “non-GAAP” financial information contained therein, (D) no such report shall be required to comply with Regulation S-X including, without limitation, Rules 3-05, 3-09, 3-10, 3-16, 13-01, 13-02 or Article 11 thereof, (E) no such report shall be required to provide any information that is not otherwise similar to information currently included in or incorporated by reference into the Offering Memorandum, (F) trade secrets and other information that could cause competitive harm to the Lead Issuer and its Restricted Subsidiaries may be excluded from any disclosures; and (G) such financial statements and information may, at the election of the Lead Issuer, be prepared in accordance with U.S. GAAP or IFRS.

All such annual reports shall be furnished within 90 days after the end of the fiscal year to which they relate; all such quarterly reports shall be furnished within 45 days after the end of the fiscal quarter to which they relate.

The Lead Issuer will be deemed to have furnished the reports referred to in subclauses (1) and (2) of this Section 4.03(a) if Holdings or any other direct or indirect parent entity of the Lead Issuer has filed reports containing such information (or any such information of a parent entity pursuant to the fourth succeeding paragraph) with the SEC.

If the Lead Issuer or any parent entity of the Lead Issuer does not file reports containing such information with the SEC, then the Lead Issuer shall make available such information and such reports to any Holder of the Notes and to any beneficial owner of the Notes, in each case by posting such information on a password-protected website or online data system which shall require a confidentiality acknowledgment, and shall make such information readily available to any bona fide prospective investor, any securities analyst (to the extent providing analysis of investment in the Notes) or any market maker in the Notes who agrees to treat such information as confidential; *provided* that the Lead Issuer shall post such information thereon and make readily available any password or other login information to any such bona fide prospective investor, securities analyst or market maker; *provided, however*, that the Lead Issuer may deny access to any competitively-sensitive information otherwise to be provided pursuant to this covenant to any such Holder, beneficial owner, bona fide prospective investor, securities analyst or market maker to the extent that the Lead Issuer determines in good faith that the provision of such information to such Person would be competitively harmful to the Lead Issuer and its Subsidiaries; and *provided, further*, that such Holders, beneficial owners, bona fide prospective investors, securities analysts and market makers shall agree to (A) treat all such reports (and information contained therein) as confidential, (B) not to use such reports (and the information contained therein) for any purpose other than their investment or potential investment in the Notes and (C) not publicly disclose any such reports (and the information contained therein).

(b) To the extent not satisfied by Section 4.03(a) hereof, the Lead Issuer shall furnish to Holders of the Notes, securities analysts and prospective investors upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act, so long as the Notes are not freely transferable under the Securities Act.

(c) If any Subsidiary of the Lead Issuer is an Unrestricted Subsidiary and if any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Lead Issuer, then the annual and quarterly information required by Section 4.03(a)(1) hereof shall include a presentation of selected financial metrics (in the Lead Issuer's sole discretion) of such Unrestricted Subsidiaries as a group in the "Management's Discussion and Analysis of Financial Condition and Results of Operations."

(d) Notwithstanding the foregoing, the Lead Issuer may satisfy its obligations under this Section 4.03 by furnishing financial information relating to any parent entity of the Lead Issuer; *provided* that if such parent entity is not a Guarantor then the same is accompanied by selected financial metrics or other disclosure that show the differences (in the Lead Issuer's sole discretion) between the information relating to such parent, on the one hand, and the information relating to the Lead Issuer and its Restricted Subsidiaries on a stand-alone basis, on the other hand.

(e) Notwithstanding anything herein to the contrary, the Issuers will not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (iii) of Section 6.01(a) hereof until 90 days after the receipt of the written notice delivered thereunder.

To the extent any information is not provided within the time periods specified in this Section

4.03 and such information is subsequently provided, the Issuers will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been automatically cured.

**Section 4.04.** *Compliance Certificate.*

(a) The Lead Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year ending after the Issue Date (which fiscal year, as of the Issue Date, ends on December 31), a certificate from its principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Lead Issuer and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether Lead Issuer and its Restricted Subsidiaries have kept, observed, performed and fulfilled their respective obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge, on behalf of the Lead Issuer, the Lead Issuer and its Restricted Subsidiaries have kept, observed, performed and fulfilled in all material respects each and every condition and covenant contained in this Indenture during such fiscal year and no Default has occurred and is continuing with respect to any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred and is continuing, describing all such Defaults of which he or she may have knowledge and what action the Lead Issuer is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Lead Issuer or any Restricted Subsidiary gives any notice or takes any other action with respect to a claimed Default, the Lead Issuer shall promptly (which shall be no more than 20 Business Days after becoming aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile or electronic transmission an Officer's Certificate specifying such Default (unless such Default has been cured or waived within such 20-Business Day time period).

**Section 4.05.** *Taxes.* The Lead Issuer shall pay or discharge, and shall cause each of its Restricted Subsidiaries to pay or discharge, prior to delinquency, all material taxes, lawful assessments, and governmental levies except such as are contested in good faith and by appropriate actions or where the failure to effect such payment or discharge is not adverse in any material respect to the Holders.

**Section 4.06.** *Stay, Extension and Usury Laws.* The Issuers and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law whenever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture and the Notes; and the Issuers and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and (to the extent that they may lawfully do so) covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

**Section 4.07.** *Limitation on Restricted Payments.*

(a) The Lead Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution on account of the Lead Issuer's, or any of its Restricted Subsidiaries', Equity Interests (in each case, solely to a holder of Equity

Interests in such Person's capacity as a holder of such Equity Interests), including any dividend, payment or distribution payable in connection with any merger, amalgamation or consolidation other than:

(A) dividends, payments and distributions by the Lead Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Lead Issuer or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock); or

(B) dividends, payments and distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Subsidiary, the Lead Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities;

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Lead Issuer or Holdings (or any other direct or indirect parent company of the Lead Issuer, including any purchase, redemption, defeasance, acquisition or retirement in connection with any merger, amalgamation or consolidation, in each case held by a Person other than the Lead Issuer or a Restricted Subsidiary;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of the Issuers or a Subsidiary Guarantor, other than:

(A) Indebtedness permitted under clauses (vii), (viii) and (ix) of Section 4.09(b) hereof;  
or

(B) the payment, redemption, purchase, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year after the date of payment, redemption, purchase, repurchase, defeasance or acquisition or retirement; or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above (other than any exceptions thereto) being collectively referred to as “**Restricted Payments**”), unless, at the time of such Restricted Payment:

(A) (x) in the case of a Restricted Payment under clauses (i) and (ii) above, no Event of Default shall have occurred and be continuing or would occur as a consequence thereof and, in the case of a Restricted Payment under clauses (iii) and (iv) above, no Event of Default described under clause (i), (ii) or (vi) of Section 6.01(a) hereof shall have occurred and be continuing or would occur as a consequence thereof and (y) except with respect to a Restricted Payment made pursuant to clause (B)(7) below, after giving pro forma effect to the payment of any such Restricted Payment, the Consolidated Total Net Leverage Ratio shall be no greater than 3.50 to 1.00; and; and

(B) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Lead Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (i) (without duplication) and (vi)(C) of Section 4.07(b)



hereof), but excluding all other Restricted Payments permitted by Section 4.07(b) hereof, is less than the sum of (without duplication) (the “**Cumulative Credit**”):

(1) 50% of the Consolidated Net Income of the Lead Issuer for the period (taken as one accounting period and including any predecessor of the Lead Issuer) from the beginning of the fiscal quarter in which the Issue Date occurs to the end of the Lead Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; *plus*

(2) 100% of the aggregate Net Cash Proceeds and the fair market value of marketable securities or other property received by the Lead Issuer or its Restricted Subsidiaries after the Issue Date (other than Net Cash Proceeds to the extent such Net Cash Proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to clause (xii)(A) of Section 4.09(b) hereof) from the issue or sale of:

(i) (A) Equity Interests of the Lead Issuer, including Treasury Capital Stock, but excluding Net Cash Proceeds and the fair market value of marketable securities or other property received from the sale of:

(x) Equity Interests of the Lead Issuer to any future, present or former employees, directors, officers, managers, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any direct or indirect parent company of the Lead Issuer or any of the Lead Issuer's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof; and

(y) Designated Preferred Stock; and

(B) to the extent such Net Cash Proceeds, marketable securities or other property are actually contributed to the Lead Issuer or any of its Restricted Subsidiaries, Equity Interests of the Lead Issuer or any of the Lead Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of any such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof); or

(ii) Indebtedness of the Lead Issuer or a Restricted Subsidiary that has been converted into or exchanged for such Equity Interests of the Lead Issuer or a parent company of the Lead Issuer;

*provided* that this clause (2) shall not include the proceeds from (w) Refunding Capital Stock applied in accordance with clause (ii) of Section 4.07(b) hereof, (x) Equity Interests or convertible debt securities of the Lead Issuer or a Restricted Subsidiary sold to a Restricted Subsidiary or to the Lead Issuer, (y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (z) Excluded Contributions; *plus*



(3) 100% of the aggregate amount of Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Lead Issuer or a Restricted Subsidiary (including the aggregate principal amount of any Indebtedness of the Lead Issuer or a Restricted Subsidiary contributed to the Lead Issuer or a Restricted Subsidiary for cancellation) or that becomes part of the capital of the Lead Issuer or a Restricted Subsidiary through consolidation, amalgamation or merger following the Issue Date (other than (i) Net Cash Proceeds to the extent such Net Cash Proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to clause (xii)(A) of Section 4.09(b) hereof, (ii) contributions by a Restricted Subsidiary and (iii) any Excluded Contributions); *plus*

(4) 100% of the aggregate amount received in Cash Equivalents and the fair market value of marketable securities or other property received by the Lead Issuer or any Restricted Subsidiary by means of:

(i) the sale or other disposition (other than to the Lead Issuer or a Restricted Subsidiary) of, or other returns of or on Investments from, Restricted Investments made by the Lead Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Lead Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Lead Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the issuance, sale or other disposition (other than to the Lead Issuer or a Restricted Subsidiary) of the Equity Interests of, or a dividend or distribution (other than an Excluded Contribution) from, an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary was made by the Lead Issuer or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment, but including such Cash Equivalents and fair market value to the extent exceeding the amount of such Investment), in each case, after the Issue Date; or

(iii) any returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a U.S. dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment) and without duplication of any returns, profits, distributions or similar amounts included in the calculation of such basket; *plus*

(5) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Lead Issuer or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Lead Issuer or a Restricted Subsidiary after the Issue Date, the fair market value (as determined by the Lead Issuer in good faith) of the Investment in such

Unre- stricted Subsidiary (or the assets transferred) at the time of the redesignation of such  
Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such

merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary was made by the Lead Issuer or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment made after the Issue Date, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of fair market value; *plus*

(6) the aggregate amount of Declined Collateral Proceeds and Declined Proceeds since the Issue Date; *plus*

(7) the greater of (A) \$150.0 million and (B) 25% of LTM EBITDA.

(b) The provisions of Section 4.07(a) hereof shall not prohibit:

(i) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or the giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, defeasance, retirement or other acquisition of any Equity Interests (“*Treasury Capital Stock*”), including any accrued and unpaid dividends thereon, or Subordinated Indebtedness of the Lead Issuer or any Restricted Subsidiary or any Equity Interests of any direct or indirect parent company of the Lead Issuer, in exchange for, or in an amount not to exceed the proceeds of, the sale or issuance, within 120 days of such redemption, repurchase, retirement or other acquisition (other than to a Restricted Subsidiary) of Equity Interests of the Lead Issuer or any direct or indirect parent company of the Lead Issuer to the extent contributed to the Lead Issuer (in each case, other than any Disqualified Stock) (“*Refunding Capital Stock*”), (B) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Lead Issuer or to an employee stock ownership plan or any trust established by the Lead Issuer or any of its Subsidiaries) of Refunding Capital Stock, and (C) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clauses (vi)(A) or (B) of this Section 4.07(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Lead Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iii) the prepayment, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (1) Subordinated Indebtedness of an Issuer or a Subsidiary Guarantor made by exchange for, or in an amount not to exceed the proceeds of the sale of, new Indebtedness of the Issuers or a Subsidiary Guarantor or Disqualified Stock of the Issuers or a Subsidiary Guarantor made within 120 days of such incurrence or issuance of new Indebtedness or Disqualified Stock or (2) Disqualified Stock of the Issuers or a Subsidiary Guarantor made by exchange for, or in an amount not to exceed the proceeds of the sale of, Disqualified Stock

of the Issuers or a Sub- sidiary Guarantor made within 120 days of such issuance of Disqualified Stock, that, in each case, is incurred or issued, as applicable, in compliance with Section 4.09 hereof so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness or the liquidation preference of such new Disqualified Stock does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness or the liquidation preference of, plus any accrued and unpaid dividends on, the Disqualified Stock being so prepaid, defeased, re-deemed, repurchased, exchanged, acquired or retired for value, plus the amount of any premium (including tender premium) paid on the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired, defeasance costs and any fees and expenses incurred in connection with the issuance of such new Indebtedness or Disqualified Stock;

(B) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so defeased, re-deemed, repurchased, exchanged, acquired or retired;

(C) such new Indebtedness or Disqualified Stock has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired (or, if earlier, a date that is at least 91 days after the maturity date of the Notes); and

(D) such new Indebtedness or Disqualified Stock has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness or Disqualified Stock being so defeased, re-deemed, repurchased, exchanged, acquired or retired (or requires no or nominal payments in cash prior to the date that is 91 days after the maturity date of the Notes);

(iv) a Restricted Payment to pay for the repurchase, redemption or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Lead Issuer or any direct or indirect parent company of the Lead Issuer held by any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any employee, director, officer, manager, member, partner, independent contractor or consultant equity plan or stock option plan or any other employee, director, officer, manager, member, partner, independent contractor or consultant benefit plan or agreement, or any equity subscription or equityholder agreement or any termination agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Lead Issuer or any direct or indirect parent company of the Lead Issuer in connection with such repurchase, retirement or other acquisition), including any Equity Interest received or rolled over by any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Lead Issuer, any of its Subsidiaries or any direct or indirect parent company of the Lead Issuer in connection with the Transactions or any other transaction; *provided*, that the aggregate amount of Restricted Payments made under this clause (iv) does not exceed in any calendar year an amount equal to \$25.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$50.0 million in any calendar year; *provided, further*, that such amount in any calendar year under this clause may be increased by an amount not to exceed:



(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock and other than to a Restricted Subsidiary) of the Lead Issuer and, to the extent

contributed to the Lead Issuer or its Subsidiaries, the cash proceeds from the sale of Equity Interests of any of the Lead Issuer's direct or indirect parent companies, in each case to any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments under the Cumulative Credit; *plus*

(B) the amount of any cash bonuses otherwise payable to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that are foregone in exchange for the receipt of Equity Interests of the Lead Issuer or any of its direct or indirect parent companies pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(C) the cash proceeds of key man life insurance policies received by the Lead Issuer or its Restricted Subsidiaries (or any direct or indirect parent company of the Lead Issuer to the extent contributed to the Lead Issuer or one of its Subsidiaries) after the Issue Date; *less*

(D) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A), (B) and (C) of this clause (iv);

*provided*, that the Lead Issuer may elect to apply all or any portion of the aggregate increase contemplated by clauses (A), (B) and (C) of this clause (iv) in any calendar year; and *provided, further*, that (i) cancellation of Indebtedness owing to the Lead Issuer or any Restricted Subsidiary from any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of the Lead Issuer's direct or indirect parent companies or any of the Lead Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Lead Issuer or any of its direct or indirect parent companies and (ii) the repurchase, redemption or other acquisition or retirement for value of Equity Interests deemed to occur upon or in connection with the exercise of options, warrants or similar instruments if such Equity Interests represent all or a portion of the exercise price thereof or payments, in lieu of the issuance of fractional Equity Interests or withholding to pay other taxes payable in connection therewith, in the case of each of clauses (i) and (ii), will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Lead Issuer or any of its Restricted Subsidiaries or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 4.09 hereof to the extent such dividends or distributions are included in the definition of "*Fixed Charges*";

(vi) (A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Lead Issuer after the Issue Date;



(B) the declaration and payment of dividends to any direct or indirect parent company of the Lead Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Dis-qualified Stock) issued by such parent company after the Issue Date; *provided* that the amount of dividends paid pursuant to this clause (B) shall not exceed the aggregate amount of cash actually contributed to the Lead Issuer from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (ii) of this Section 4.07(b);

*provided*, in the case of each of (A) and (C) of this clause (vi), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Lead Issuer could incur \$1.00 of additional Indebtedness pursuant to Section 4.09(a) hereof;

(vii) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (vii) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of Cash Equivalents or marketable securities (until such proceeds are converted to Cash Equivalents), not to exceed the greater of (a) \$50.0 million and

(b) 8% of LTM EBITDA at the time of such Investment (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments; *provided, however*, that if any Investment pursuant to this clause (vii) is made in any Person that is not a Restricted Subsidiary of the Lead Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) of the definition of “Permitted Investments” and shall cease to have been made pursuant to this clause (vii);

(viii) payments made or expected to be made by the Lead Issuer or any Restricted Subsidiary in respect of withholding or similar taxes payable upon or in connection with the exercise or vesting of Equity Interests or any other equity award by any future, present or former employee, director, officer, member of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer or any Restricted Subsidiary or any direct or indirect parent company of the Lead Issuer and any repurchases or withholdings of Equity Interests in connection with the exercise or vesting of stock options, warrants or the issuance of restricted stock units or similar equity-based awards or payments in lieu of the issuance of fractional Equity Interests with respect to stock options, warrants, restricted stock units or similar equity-based awards;

(ix) Restricted Payments in an aggregate amount per annum not to exceed 5.0% of Market Capitalization;



(x) Restricted Payments that are made (a) in an amount that does not exceed the aggregate amount of Excluded Contributions received following the Issue Date or (b) without duplication with clause (a), in an amount not to exceed the cash proceeds from a sale, conveyance, transfer or other disposition in respect of property or assets acquired after the Issue Date, if the acquisition of such property or assets was financed with Excluded Contributions;

(xi) (A) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (xi)(A) (in the case of Restricted Investments, at the time outstanding (without giving effect to the sale of an Investment to the extent the proceeds of such sale do not consist of, or have not been converted to, Cash Equivalents)) not to exceed the greater of (a) \$150.0 million and (b) 25% of LTM EBITDA at such time (in the case of a Restricted Investment, determined on the date such Investment is made, with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, plus the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments); *provided, however*, that if any Restricted Payment pursuant to this clause (xi)(A) consists of an Investment made in any Person that is not a Restricted Subsidiary of the Lead Issuer at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) of the definition of “Permitted Investments” and shall cease to have been made pursuant to this clause (xi)(A); and (B) any Restricted Payments, so long as, after giving pro forma effect to the payment of any such Restricted Payment, the Consolidated Total Net Leverage Ratio shall be no greater than 2.00 to 1.00;

(xii) distributions or payments of Securitization Fees;

(xiii) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or used to fund amounts owed in connection with the Transactions (including dividends or distributions to any direct or indirect parent company of the Lead Issuer to permit payment by such parent company of such amounts);

(xiv) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness, Disqualified Stock or Preferred Stock pursuant to the provisions similar to those described under Sections 4.10 and 4.14 hereof; *provided* that if the Issuers shall have been required to make a Change of Control Offer, Collateral Asset Sale Offer or Asset Sale Offer, as applicable, to purchase the Notes on the terms provided in this Indenture applicable to Change of Control Offers, Collateral Asset Sale Offers or Asset Sale Offers, respectively, all Notes validly tendered by Holders of such Notes in connection with a Change of Control Offer, Collateral Asset Sale Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed, acquired or retired for value;

(xv) the declaration and payment of dividends or distributions by the Lead Issuer to, or the making of loans to, any direct or indirect parent company of the Lead Issuer in amounts required for any direct or indirect parent company of the Lead Issuer to pay, in each case without duplication:

(A) franchise, excise and similar taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(B) [Reserved];

(C) salary, bonus, severance, indemnity and other benefits payable to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of any direct or indirect parent company of the Lead Issuer to the extent such salaries, bonuses, severance, indemnity and other benefits are attributable to the ownership or operation of the Lead Issuer and its Restricted Subsidiaries;

(D) general organizational, operating, administrative, compliance, overhead and other costs and expenses (including, without limitation, expenses related to auditing or other accounting or tax reporting matters) and, following the first public offering of the Lead Issuer's common equity or the common equity of any direct or indirect parent company of the Lead Issuer, listing fees and other costs and expenses attributable to being a publicly traded company of any direct or indirect parent company of the Lead Issuer;

(E) fees and expenses related to any equity or debt offering, financing transaction, acquisition, divestiture, investment or other non-ordinary course transaction (whether or not successful) of such parent entity; *provided* that any such transaction was in the good faith judgment of the Lead Issuer intended to be for the benefit of the Lead Issuer and its Restricted Subsidiaries;

(F) [Reserved];

(G) (i) cash payments in lieu of issuing fractional shares or interests in connection with the exercise of warrants, options, other equity-based awards or other securities convertible into or exchangeable for Equity Interests of the Lead Issuer or any direct or indirect parent company of the Lead Issuer and any dividend, split or combination thereof or any transaction permitted under this Indenture and (ii) any conversion request by a holder of convertible Indebtedness and cash payments in lieu of fractional shares or interests in connection with any such conversion and payments on convertible Indebtedness in accordance with its terms;

(H) to finance Investments that would otherwise be permitted to be made pursuant to this Section 4.07 if made by the Lead Issuer or its Restricted Subsidiaries; *provided*, that (1) such Restricted Payment shall be made within 120 days of the closing of such Investment, (2) such direct or indirect parent company shall, promptly following the closing thereof, cause (x) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Lead Issuer or its Restricted Subsidiaries or (y) the merger, consolidation or amalgamation of the Person formed or acquired into the Lead Issuer or its Restricted Subsidiaries (to the extent not prohibited by Section 5.01 hereof) in order to consummate such Investment, (3) such direct or indirect parent company and its Affiliates (other than the Lead Issuer or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Lead Issuer or a Restricted Subsidiary could have given such consideration or made such payment to such direct or indirect parent company in compliance with this Indenture, (4) any property received by the Lead Issuer shall not increase amounts available for Restricted Payments pursuant to the Cumulative Credit and (5) such Investment shall be deemed to be made by the Lead Issuer or such Restricted Subsidiary pursuant to another provision of this Section



4.07(b) (other than pursuant to clause (x) hereof) or pursuant to the definition of “Permitted Investments” (other than clause (i) thereof);

(I) amounts that would be permitted to be paid by the Lead Issuer or its Restricted Subsidiaries under clauses (iv), (viii), (ix), (xiii) and (xiv) of Section 4.11(b)

hereof; *provided* that the amount of any dividend or distribution under this clause (xv)(I) to permit such payment shall reduce, without duplication, Consolidated Net Income of the Lead Issuer to the extent, if any, that such payment would have reduced Consolidated Net Income of the Lead Issuer if such payment had been made directly by the Lead Issuer and increase (or, without duplication of any reduction of Consolidated Net Income, decrease) EBITDA to the extent, if any, that Consolidated Net Income is reduced under this clause (xv)(I) and such payment would have been added back to (or, to the extent excluded from Consolidated Net Income, would have been deducted from) EBITDA if such payment had been made directly by the Lead Issuer, in each case, in the period such payment is made; and

(J) amounts in respect of Indebtedness of such direct or indirect parent company of the Lead Issuer which is guaranteed by the Lead Issuer or a Restricted Subsidiary;

(xvi) [Reserved];

(xvii) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment so long as the amount of such redemptions are no greater than the amount that constituted such Restricted Payment or Permitted Investment;

(xviii) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with any Permitted Investment or a consolidation, merger or transfer of assets that complies with, or is not prohibited by, Section 5.01 hereof;

(xix) the repurchase, redemption or other acquisition of Equity Interests of the Lead Issuer or any Restricted Subsidiary deemed to occur in connection with paying cash in lieu of fractional shares of such Equity Interests in connection with a share dividend, distribution, share split, reverse share split, merger, consolidation, amalgamation or other business combination of the Lead Issuer or any Restricted Subsidiary, in each case, permitted under this Indenture;

(xx) payments by the Lead Issuer to any direct or indirect parent of the Lead Issuer for any taxable period (a) for which the Lead Issuer and/or any of its Subsidiaries is a member of a consolidated, combined or similar foreign, federal, state or local income or similar tax group that includes the Lead Issuer and/or its Subsidiaries and whose common parent is a direct or indirect parent of the Lead Issuer (a “**Tax Group**”) or (b) for which the Lead Issuer is a disregarded entity or a partnership with a direct or indirect corporate parent (a “**Corporate Parent**”), to the extent such income or similar Taxes are attributable to the income of the Lead Issuer and/or its Restricted Subsidiaries, as applicable, and, to the extent of any cash amounts actually received from its Unrestricted Subsidiaries for such purpose, to the income of such Unrestricted Subsidiaries, to pay the portion of such U.S. federal, state and local and/or foreign income or similar Taxes (as applicable) of such Tax Group or such Corporate Parent that are attributable to the taxable income of the Lead Issuer and/or its applicable Subsidiaries; *provided* that in each case the amount of such payments in respect of any taxable year does not exceed the amount that the Lead Issuer and/or its applicable Restricted Subsidiaries (and, to the extent permitted above, its applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in

respect of the relevant foreign, federal, state or local income or similar Taxes for such taxable year had the Lead

Issuer and/or its applicable Subsidiaries (including its Unrestricted Subsidiaries to the extent described above), as applicable, paid such Taxes separately from any such parent company for all relevant taxable periods;

(xxi) [Reserved]; and

(xxii) Restricted Payments payable solely in Preferred Stock existing as of the Issue Date of the Lead Issuer or any of its Restricted Subsidiaries permitted by Section 4.09 in an aggregate amount not to exceed \$12.5 million in any fiscal year of the Lead Issuer (subject to a carry-forward of unused or deferred amounts in any fiscal year to the subsequent fiscal year and carry-back of the amount available in the subsequent fiscal year to the current fiscal year);

(xxiii) Restricted Payments under hedge and warrant or other derivative transactions entered into in connection with any Permitted Convertible Notes Offering (including payments to Holdings or another direct or indirect parent of the Lead Issuer in respect of such transactions related to its convertible Indebtedness, to the extent such convertible Indebtedness is guaranteed by the Lead Issuer or any of its Restricted Subsidiaries in accordance with this Indenture) or any early termination thereof; and

(xxiv) the making of cash payments in satisfaction of the conversion obligation upon conversion of convertible Indebtedness issued in any Permitted Convertible Notes Offering (including payments to Holdings or another direct or indirect parent of the Lead Issuer in respect of its convertible Indebtedness, to the extent guaranteed by the Lead Issuer or any of its Restricted Subsidiaries in accordance with this Indenture); provided that, to the extent the aggregate amount of such cash payments made since the Issue Date exceeds the sum of (x) the principal amount of such convertible Indebtedness plus (y) the amount of any payments received by the Lead Issuer or any of its Restricted Subsidiaries since the Issue Date pursuant to the exercise, settlement or termination in connection with convertible Indebtedness such cash payments shall be subtracted from the sum in clause (2) at the first paragraph of this covenant;

*provided* that at the time of, and after giving effect to, (x) any Restricted Payment other than a Restricted Investment permitted under clause (xi)(B) of this Section 4.07(b), no Event of Default shall have occurred and be continuing or would occur as a consequence thereof or (y) any Restricted Investment permitted under clause (xi)(B) of this Section 4.07(b), no Event of Default under Section 6.01(a)(i), (ii), (vi) or (vii) hereof shall have occurred and be continuing or would occur as a consequence thereof.

(c) For purposes of determining compliance with this Section 4.07, in the event that a proposed Restricted Payment (or a portion thereof) meets the criteria of clauses (i) through (xxiv) of Section 4.07(b) hereof and/or one or more of the clauses contained in the definition of “Permitted Investments,” or is entitled to be made pursuant to Section 4.07(a) hereof, the Lead Issuer will be entitled to divide or classify or later divide or reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment (or a portion thereof) between such clauses (i) through (xxiv) and such Section 4.07(a) and/or one or more of the clauses contained in the definition of “Permitted Investments,” in any manner that otherwise complies with this Section 4.07.

(d) the Lead Issuer shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of “*Unrestricted Subsidiary*.” For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Lead Issuer and its Restricted

Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the penultimate sentence of the definition of “*Investments*.” Such designation shall be permitted only if a Restricted

Payment in such amount would be permitted at such time, pursuant to this Section 4.07, or pursuant to the definition of “Permitted Investments,” and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries shall not be subject to any of the restrictive covenants set forth in this Indenture. For the avoidance of doubt, this Section 4.07 shall not restrict the making of any “*AHYDO catch up payment*” with respect to, and required by the terms of, any Indebtedness of the Lead Issuer or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Indenture.

**Section 4.08.** *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.*

(a) The Lead Issuer shall not, and shall not permit any of its Restricted Subsidiaries that is not an Issuer or a Subsidiary Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of such Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor to:

- (i) (A) pay dividends or make any other distributions to an Issuer or any Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits; or
  - (B) pay any Indebtedness owed to the Issuers or any Subsidiary Guarantor;
- (ii) make loans or advances to the Issuers or any Subsidiary Guarantor; or
- (iii) sell, lease or transfer any of its properties or assets to the Issuers or any Subsidiary Guarantor;

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

- (i) encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Secured Credit Facilities and the related documentation and Hedging Obligations;
- (ii) this Indenture, the Notes and the Guarantees;
- (iii) Purchase Money Obligations and Financing Lease Obligations that impose restrictions of the nature discussed in clause (iii) of Section 4.08(a) hereof on the property so purchased, leased, expanded, constructed, developed, installed, replaced, relocated, renewed, maintained, upgraded, repaired or improved;
- (iv) applicable law or any applicable rule, regulation or order;
- (v) (A) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into an Issuer or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to an Issuer or a Restricted Subsidiary, any agreement or other instrument of such Unrestricted Subsidiary (but, in any such case, not created in contemplation thereof) and (B) any agreement or other instrument of a Person acquired by or merged or consolidated with or into an Issuer or any of its Restricted Subsidiaries in existence at the time of

such acquisition or at the time it merges with or into an Issuer or any of its Restricted Subsidiaries or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contem-

plation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries or the property or assets so acquired;

(vi) contracts for the sale or disposition of assets, including sale-leaseback agreements, including customary restrictions with respect to a Subsidiary of the Lead Issuer pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(vii) Secured Indebtedness otherwise permitted to be incurred pursuant to Sections 4.09 and 4.12 hereof that limit the right of the debtor to dispose of or incur Liens on the assets securing such Indebtedness;

(viii) restrictions on Cash Equivalents or other deposits or net worth imposed by suppliers, customers or landlords under contracts entered into in the ordinary course of business or consistent with past practice or arising in connection with any Permitted Liens;

(ix) other Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not an Issuer or a Subsidiary Guarantor permitted to be incurred subsequent to the Issue Date pursuant to the provisions of Section 4.09 hereof;

(x) customary provisions in joint venture agreements and other similar agreements or arrangements relating to such joint venture;

(xi) provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, including with respect to intellectual property and other agreements, in each case, entered into in the ordinary course of business or consistent with industry practices or that in the judgment of the Lead Issuer would not materially impair the Issuers' ability to make payments under the Notes when due;

(xii) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which an Issuer or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business or consistent with past practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of an Issuer or such Restricted Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of such Issuer or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(xiii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Restricted Subsidiary or the assignment of any license or sub-license agreement;

(xiv) provisions restricting assignment of any agreement entered into in the ordinary course of business or consistent with past practice;

(xv) restrictions arising in connection with cash or other deposits permitted under Section 4.12 hereof;



(xvi) any agreement or instrument relating to any Indebtedness, Disqualified or Preferred Stock permitted to be incurred or issued subsequent to the Issue Date pursuant to Section

4.09 hereof if (A) the encumbrances and restrictions are not materially more disadvantageous, taken as a whole, to the Holders than is customary in comparable financings for similarly situated issuers (as determined in good faith by the Lead Issuer), (B) the encumbrances and restrictions are not materially more restrictive, taken as whole, with respect to such Restricted Subsidiaries, than the restrictions or encumbrances (x) contained in this Indenture, the Senior Secured Credit Facilities or related security documents as of the Issue Date or (y) otherwise in effect on the Issue Date or (C) either (x) the Lead Issuer determines that such encumbrance or restriction will not materially impair the Issuers' ability to make principal and interest payments on the Notes as and when they come due or (y) such encumbrances and restrictions apply only during the continuance of a default in respect of a payment or financial maintenance covenant relating to such Indebtedness;

(xvii) restrictions created in connection with any Qualified Securitization Facility; and

(xviii) any encumbrances or restrictions of the type referred to in clauses (i), (ii) and (iii) of Section 4.08(a) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xvii) of this Section 4.08(b); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Lead Issuer, not materially more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this Section 4.08, (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common equity shall not be deemed a restriction on the ability to make distributions on Capital Stock and (y) the subordination of (including the application of any standstill requirements to) loans and advances made to an Issuer or a Restricted Subsidiary to other Indebtedness incurred by such Issuer or such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

**Section 4.09.** *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.*

(a) The Issuers shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the Issuers shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or any Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor to issue Preferred Stock; *provided*, that the Issuers may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness) and issue shares of Disqualified Stock and any Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor may issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis of the Lead Issuer and its Restricted Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been

incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four- quarter period; *provided* that the then outstanding aggregate principal amount of Indebtedness (including

Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be incurred or issued, as applicable, pursuant to this Section 4.09(a) (plus any Refinancing Indebtedness in respect thereof) by Restricted Subsidiaries that are not Issuers or Subsidiary Guarantors, together with clause (xiv) of the second paragraph of this covenant, shall not exceed the greater of (a) \$250.0 million and (b) 42% of LTM EBITDA (in each case, determined on the date of such incurrence).

(b) The provisions of Section 4.09(a) hereof shall not apply to:

(i) Indebtedness incurred pursuant to any Credit Facilities by the Issuers or any of their Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof); *provided* that immediately after giving effect to any such incurrence or issuance (including pro forma application of the net proceeds therefrom), the then outstanding aggregate principal amount of all Indebtedness incurred or issued under this clause (i) does not exceed (a) the sum of (A) \$550.0 million, *plus*, (B) an amount equal to \$780.0 million *plus* (C) the greater of \$300.0 million and 50% of LTM EBITDA *plus* (B) an additional amount after all amounts have been incurred under subclause (A), if after giving pro forma effect to the incurrence of such additional amount (including a pro forma application of the net proceeds therefrom), the Consolidated First Lien Net Leverage Ratio would either (x) have been equal to or less than 2.25 to 1.00 or (y) in the case of Indebtedness being applied to finance an acquisition or other Investment, have been no greater than the Consolidated First Lien Net Leverage Ratio as of immediately prior to such incurrence and application of net proceeds; *provided* that for purposes of determining the amount that may be incurred under this clause (i)(B) only, all Indebtedness incurred under this clause (i)(B) shall be deemed to be included in clause (1) of the definition of "Consolidated First Lien Net Leverage Ratio;"

(ii) the incurrence by an Issuer and any Subsidiary Guarantor of Indebtedness represented by the Notes and the Guarantees (but excluding any Additional Notes and any guarantees thereof);

(iii) Indebtedness, Disqualified Stock and Preferred Stock of the Issuers or their Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.09(b));

(iv) Indebtedness (including Financing Lease Obligations and Purchase Money Obligations), Disqualified Stock and Preferred Stock incurred or issued by the Issuers or any of their Restricted Subsidiaries to finance the purchase, lease, expansion, construction, development, installation, replacement, relocation, renewal, maintenance, upgrade, repair or improvement of property (real or personal), equipment or any other asset, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount (together with any Refinancing Indebtedness in respect thereof) not to exceed the greater of (a) \$150.0 million and (b) 25% of LTM EBITDA (in each case, determined at the date of incurrence or issuance); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (iv) may be allocated by the Lead Issuer such that it ceases to be deemed incurred or outstanding for purposes of this clause (iv) but is instead deemed incurred under the first paragraph of this covenant from and after the first date on which the Issuers or such Restricted Subsidiaries could have incurred such Indebtedness,

Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (iv);

(v) Indebtedness incurred by the Issuers or any of their Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or created, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with past practice, including letters of credit in favor of suppliers or trade creditors or in respect of workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance;

(vi) Indebtedness, Disqualified Stock and Preferred Stock arising from (A) Permitted Intercompany Activities and (B) agreements of the Issuers or their Restricted Subsidiaries providing for indemnification, adjustment of purchase price, earn-outs or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, a Subsidiary or Investment, other than guarantees of Indebtedness for borrowed money incurred by any Person acquiring all or any portion of such business, assets, Subsidiary or Investment for the purpose of financing such acquisition;

(vii) Indebtedness, Disqualified Stock and Preferred Stock of the Issuers to a Restricted Subsidiary; *provided* that any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor, excluding any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued in the ordinary course of business or consistent with past practice, is subordinated in right of payment (to the extent permitted by applicable law) to the Notes (for the avoidance of doubt, any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor shall be deemed to be expressly subordinated in right of payment to the Notes unless the terms of such Indebtedness, Disqualified Stock or Preferred Stock expressly provide otherwise); *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness, Disqualified Stock or Preferred Stock (except to an Issuer or another Restricted Subsidiary or any pledge of such Indebtedness, Disqualified Stock or Preferred Stock constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness, Disqualified Stock or Preferred Stock (to the extent such Indebtedness, Disqualified Stock or Preferred Stock is then outstanding) not permitted by this clause (vii);

(viii) Indebtedness, Disqualified Stock and Preferred Stock of a Restricted Subsidiary to an Issuer or another Restricted Subsidiary; *provided* that if a Subsidiary Guarantor incurs such Indebtedness, Disqualified Stock or Preferred Stock to a Restricted Subsidiary that is not an Issuer or a Guarantor, excluding any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued in the ordinary course of business or consistent with past practice, such Indebtedness, Disqualified Stock or Preferred Stock is subordinated in right of payment (to the extent permitted by applicable law) to the Guarantee of the Notes by such Subsidiary Guarantor, as applicable (for the avoidance of doubt, any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not an Issuer or a Subsidiary Guarantor shall be deemed to be expressly subordinated in right of payment to the Guarantee of the Notes by such Subsidiary Guarantor, as applicable, unless the terms of such Indebtedness, Disqualified Stock or Preferred Stock expressly provide otherwise); *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event

which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness, Disqualified Stock or

Preferred Stock (except to an Issuer or another Restricted Subsidiary or any pledge of such Indebtedness, Disqualified Stock or Preferred Stock constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness, Disqualified Stock or Preferred Stock (to the extent such Indebtedness, Disqualified Stock or Preferred Stock is then outstanding) not permitted by this clause (viii);

(ix) Indebtedness under Bilateral Letter of Credit Facilities not to exceed \$200.0 million at any time;

(x) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(xi) obligations in respect of self-insurance and obligations in respect of stays, customs, performance, bid, indemnity, appeal, judgment, surety and other similar bonds or instruments and performance, bankers' acceptance and completion guarantees and similar obligations provided by the Lead Issuer or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(xii) (A) Indebtedness or Disqualified Stock of the Issuers and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 150% of the Net Cash Proceeds received by the Lead Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Lead Issuer or cash contributed to the capital of the Lead Issuer (in each case, other than Excluded Contributions, proceeds of Disqualified Stock or sales of Equity Interests to the Lead Issuer or any of its Subsidiaries) as determined in accordance with clauses (B)(2) and (B)(3) of Section 4.07(a) hereof to the extent such Net Cash Proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 4.07(a) hereof or to make Permitted Investments specified in clauses (h), (k), (m), (bb) or (cc) of the definition thereof, and (B) Indebtedness or Disqualified Stock of the Issuers and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (xii)(B), does not at any time outstanding exceed the greater of (x) \$100.0 million and (y) 17% of LTM EBITDA (in each case, determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to clause (xii)(A) or (xii)(B) may be allocated by the Lead Issuer such that it ceases to be deemed incurred or outstanding for purposes of such clause (xii)(A) or (xii)(B) but is instead deemed incurred under Section 4.09(a) hereof from and after the first date on which the Issuers or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on such clause (xxi)(A) or (xii)(B);

(xiii) the incurrence or issuance by the Issuers or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to extend, replace, refund, refinance, renew or defease any Indebtedness (or unutilized commitment in respect of Indebtedness), Disqualified Stock or Preferred Stock incurred or issued as permitted under Section 4.09(a) hereof and clauses (ii), (iii), (iv) and (xii)(A) of this Section 4.09(b), this clause (xiii) and clauses (xiv) and (xxix) of this Section 4.09(b) or any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued to so extend, replace, refund, refinance, renew or defease such Indebtedness (or unutilized commitment in respect of Indebtedness), Disqualified Stock or



Preferred Stock, including, in each case, additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay

premiums (including tender premiums), defeasance costs, accrued interest or dividends, underwriting or initial purchaser discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection therewith and Indebtedness incurred pursuant to a commitment that refinances any Indebtedness or unutilized commitment (the “**Refinancing In- debtedness**”) prior to its respective maturity; *provided* that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased (or requires no or nominal payments in cash (other than interest payments) prior to the date that is 91 days after the maturity date of the Notes);

(B) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (i) Indebtedness subordinated in right of payment to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Guarantee thereof at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively; and

(C) shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Lead Issuer that is not an Issuer or a Subsidiary Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Issuer;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Lead Issuer that is not an Issuer or a Subsidiary Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness or Disqualified Stock of an Issuer or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and, *provided, further*, that subclause (A) of this clause (xiii) will not apply to any extension, replacement, refunding, refinancing, renewal or defeasance of any Credit Facilities or Secured Indebtedness;

(xiv) (A) Indebtedness, Disqualified Stock or Preferred Stock of an Issuer or a Restricted Subsidiary incurred or issued to finance an acquisition (or other purchase of assets) or (B) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by an Issuer or any Restricted Subsidiary or merged into or consolidated or amalgamated with an Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided*, that in the case of clauses (A) and (B), after giving effect to such acquisition, merger, amalgamation or consolidation, (1) the aggregate amount of such Indebtedness, Disqualified Stock or Preferred Stock incurred under this clause (xiv) by Restricted Subsidiaries that are not Subsidiary Guarantors (together with any Indebtedness, Disqualified Stock or Preferred Stock

incurred by Restricted Sub- sidiaries that are not Subsidiary Guarantors pursuant to the first paragraph of this covenant), to- gether with any Refinancing Indebtedness in respect thereof, shall not exceed the greater of

(i) \$250.0 million and (ii) 42% of LTM EBITDA at any time outstanding (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this subclause (1) may be allocated by the Lead Issuer such that it ceases to be deemed incurred or outstanding for purposes of this subclause (1) but is instead deemed incurred under the first paragraph of this covenant from and after the first date on which the Issuers or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this subclause (1)) and (2) either (x) the Lead Issuer would be permitted to incur at least \$1.00 of additional Indebtedness, Disqualified Stock or Preferred Stock pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of this covenant, or (y) the Fixed Charge Coverage Ratio for the Lead Issuer and its Restricted Subsidiaries is equal to or greater than immediately prior to such acquisition, merger, amalgamation or consolidation;

(xv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with past practice;

(xvi) Indebtedness of the Issuers or any of their Restricted Subsidiaries supported by a letter of credit issued pursuant to any Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(xvii) (A) any guarantee or co-issuance by an Issuer or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by such Restricted Subsidiary is permitted under the terms of this Indenture; or

(B) any guarantee or co-issuance by a Restricted Subsidiary of Indebtedness or other obligations of an Issuer so long as the incurrence of such Indebtedness or other obligations by such Issuer is permitted under the terms of this Indenture;

(xviii) (A) Indebtedness, Disqualified Stock or Preferred Stock consisting of Indebtedness, Disqualified Stock or Preferred Stock issued by an Issuer or any of its Restricted Subsidiaries to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members, in each case to finance the purchase or redemption of Equity Interests of the Lead Issuer or any direct or indirect parent company of the Lead Issuer to the extent described in clause (iv) of Section 4.07(b) hereof, and (B) Indebtedness representing deferred compensation or similar arrangements to any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of Holdings (or any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice;

(xix) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business or consistent with past practice from customers for goods and services purchased in the ordinary course of business or consistent with past practice;

(xx) (A) Indebtedness owed on a short-term basis to banks and other financial institutions incurred in the ordinary course of business or consistent with past practice of the Lead Is-

suer and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Lead Issuer and its Restricted Subsidiaries and (B) Indebtedness in respect of Bank Products;

(xxi) Indebtedness incurred by an Issuer or a Restricted Subsidiary (a) in connection with bankers' acceptances, discounted bills of exchange or the financing, discounting or factoring of receivables or payables or (b) relating to vendor financings, in each case of subclause (a) and (b), incurred or undertaken consistent with past practice or in the ordinary course of business;

(xxii) Indebtedness of the Issuers or any of their Restricted Subsidiaries consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business or consistent with past practice;

(xxiii) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Issuers or Subsidiary Guarantors in an aggregate principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (xxiii), does not at any time outstanding exceed the greater of

(a) \$150.0 million and (b) 25% of LTM EBITDA (in each case, determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (xxiii) may be allocated by the Lead Issuer such that it ceases to be deemed incurred or outstanding for purposes of this clause (xxiii) but is instead deemed incurred under Section 4.09(a) hereof from and after the first date on which the Issuers or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on this clause (xxiii);

(xxiv) Indebtedness of the Issuers or any of their Restricted Subsidiaries undertaken in connection with cash management and related activities with respect to any Subsidiary or joint venture in the ordinary course of business or consistent with past practice;

(xxv) Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries of the Issuers in an aggregate principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (xxv), does not at any time outstanding exceed the greater of (a) \$100.0 million and (b) 20.0% of the total assets of the Foreign Subsidiaries on a consolidated basis (in each case, determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (xxv) may be allocated by the Lead Issuer such that it ceases to be deemed incurred or outstanding for purposes of this clause (xxv) but is instead deemed incurred under Section 4.09(a) hereof from and after the first date on which the Issuers or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on this clause (xxv);

(xxvi) Indebtedness, Disqualified Stock or Preferred Stock incurred by the Issuers or any of their Restricted Subsidiaries to the extent that the net proceeds thereof are deposited with the Trustee at or promptly after the funding of such Indebtedness, Disqualified Stock or Preferred Stock to satisfy and discharge the Notes

or exercise the Issuers' legal defeasance or covenant de- feasance option as described under Article 8, in each case, in accordance with this Indenture;

(xxvii) Indebtedness consisting of obligations of the Issuer or any of their Restricted Subsidiaries under deferred purchase price, earn-outs or other arrangements incurred by such Person in connection with any acquisition permitted under this Indenture or any other Investment permitted under this Indenture;

(xxviii) Indebtedness attributable to any Sale and Lease-Back Transactions that are on fair market terms; and

(xxix) Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to any transaction permitted under this Indenture.

(c) For purposes of determining compliance with this Section 4.09:

(i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories or subcategories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (i) through (xxix) (or subclauses thereof) of Section 4.09(b) hereof or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Lead Issuer, in its sole discretion, may divide or classify, and may from time to time redivide and reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one or more of the clauses or subclauses under Section 4.09(b) or under Section 4.09(a) hereof; *provided* that all Indebtedness outstanding under the Senior Secured Credit Facilities on the Issue Date shall be treated as incurred on the Issue Date under clause (i) of Section 4.09(b) hereof;

(ii) the Lead Issuer shall be entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 4.09(a) and Section 4.09(b) hereof;

(iii) guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness, Disqualified Stock or Preferred Stock that is otherwise included in the determination of a particular amount of Indebtedness, Disqualified Stock or Preferred Stock shall not be included;

(iv) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are incurred pursuant to any Credit Facility and are being treated as incurred pursuant to any clause of Section 4.09(b) or Section 4.09(a) hereof and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, Disqualified Stock or Preferred Stock, then such other Indebtedness, Disqualified Stock or Preferred Stock shall not be included;

(v) the principal amount of any Disqualified Stock of an Issuer or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof; and



(vi) for purposes of calculating the Fixed Charge Coverage Ratio, the Consolidated First Lien Net Leverage Ratio or the Consolidated Total Net Leverage Ratio, as applicable, in connection with the incurrence of any Indebtedness pursuant to Section 4.09(a) or Section 4.09(b)

hereof or the creation or incurrence of any Lien pursuant to the definition of “Permitted Liens,” the Lead Issuer may elect, at its option, to treat all or any portion of the committed amount of any Indebtedness (and the issuance and creation of letters of credit and bankers’ acceptances thereunder) which is to be incurred (or any commitment in respect thereof) or secured by such Lien, as the case may be (any such committed amount elected until revoked as described below, the “**Reserved Indebtedness Amount**”), as being incurred as of such election date, and, if such Fixed Charge Coverage Ratio, Consolidated First Lien Net Leverage Ratio or Consolidated Total Net Leverage Ratio, as applicable, is satisfied with respect thereto on such election date, any subsequent borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers’ acceptances thereunder) will be deemed to be permitted under this Section 4.09 or the definition of “Permitted Liens,” as applicable, whether or not the Fixed Charge Coverage Ratio, the Consolidated First Lien Net Leverage Ratio or the Consolidated Total Net Leverage Ratio, as applicable, at the actual time of any subsequent borrowing or reborrowing (or issuance or creation of letters of credit or bankers’ acceptances thereunder) is met; *provided that* for purposes of subsequent calculations of the Fixed Charge Coverage Ratio, the Consolidated First Lien Net Leverage Ratio or the Consolidated Total Net Leverage Ratio, as applicable, the Reserved Indebtedness Amount shall be deemed to be outstanding, whether or not such amount is actually outstanding, for so long as such commitments are outstanding or until the Lead Issuer revokes an election of a Reserved Indebtedness Amount.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, of the same class shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09. If Indebtedness, Disqualified Stock or Preferred Stock originally incurred in reliance upon a percentage of LTM EBITDA under this Section 4.09 is being refinanced and such refinancing would cause the maximum amount of Indebtedness, Disqualified Stock or Preferred Stock thereunder to be exceeded at such time, then such refinancing will nevertheless be permitted thereunder and such additional Indebtedness, Disqualified Stock or Preferred Stock will be deemed to have been incurred under the applicable provision so long as the principal amount or liquidation preference of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed the principal amount or liquidation preference of Indebtedness, Disqualified Stock or Preferred Stock being refinanced plus amounts permitted by the next sentence. Any Refinancing Indebtedness and any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred under this Indenture to refinance Indebtedness incurred pursuant to clauses (i), (xii)(B), (xxiii), and (xxv) of Section 4.09(b) hereof shall be deemed to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay accrued but unpaid interest or dividends, premiums (including tender premiums), defeasance costs, underwriting or initial purchaser discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, Disqualified Stock or Preferred Stock, the U.S. Dollar Equivalent principal amount or liquidation preference of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred, in the case of a term obligation, or upon execution of the definitive credit agreement, in the case of revolving credit debt or delayed-draw term loan debt; *provided that* if such Indebtedness, Disqualified Stock or Preferred Stock is incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if

calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount or

liquidation preference of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (A) the principal amount or liquidation preference of such Indebtedness, Disqualified Stock or Preferred Stock being refinanced plus (B) the aggregate amount of accrued but unpaid interest, fees, underwriting or initial purchaser discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount or liquidation preference of any Indebtedness, Disqualified Stock or Preferred Stock incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing.

This Indenture shall not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral or because it is secured by different collateral or issued or guaranteed by other obligors.

**Section 4.10.** *Asset Sales.*

(a) The Lead Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(i) the Lead Issuer or such Restricted Subsidiary, as the case may be, receives consideration (including, but not limited to, by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, in connection with, such Asset Sale) at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of; and

(ii) except in the case of a Permitted Asset Swap, at least 75% of the consideration for such Asset Sale, together with all other Asset Sales since the Issue Date (on a cumulative basis), received by the Lead Issuer or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided* that the following amounts shall be deemed to be Cash Equivalents for purposes of this clause (ii):

(A) the greater of the principal amount and the carrying value of any liabilities (as reflected on the Lead Issuer's or such Restricted Subsidiary's most recent consolidated balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Lead Issuer's or such Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the Lead Issuer) of the Lead Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Notes, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) pursuant to a written agreement which releases or indemnifies the Lead Issuer or such Restricted Subsidiary from such liabilities or (ii) otherwise cancelled or terminated in connection with the transaction;

(B) any securities, notes or other obligations or assets received by the Lead Issuer or such Restricted Subsidiary from such transferee that are converted or reasonably

expected by the Lead Issuer acting in good faith to be converted by the Lead Issuer or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received or expected to be received) or by their terms are required to be satisfied for Cash Equivalents within 180 days following the closing of such Asset Sale; and

(C) any Designated Non-cash Consideration received by the Lead Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (i) \$125.0 million and (ii) 20.0% of LTM EBITDA, with the fair market value of each item of Designated Non-cash Consideration being measured without giving effect to subsequent changes in value.

At the option of the Lead Issuer, the foregoing determination and calculations may be made (i) at the time the definitive agreement with respect to such Asset Sale has been signed or (ii) at the time such Asset Sale is consummated

(b) Within 450 days after the later of (x) the date of any Asset Sale and (y) the receipt of any Net Proceeds of such Asset Sale, the Lead Issuer or such Restricted Subsidiary, at its option, may apply an amount not to exceed the Net Proceeds from such Asset Sale:

(i) (A) to the extent such Net Proceeds are from an Asset Sale of Collateral, to reduce Indebtedness (through a prepayment, repayment or purchase, as applicable) as follows:

(1) Obligations under the Notes;

(2) First Lien Obligations (other than the Notes), and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility), to correspondingly reduce commitments with respect thereto; *provided* that if the Lead Issuer or any Restricted Subsidiary shall so reduce any First Lien Obligations other than the Notes, the Lead Issuer or such Restricted Subsidiary will either (a) reduce Obligations under the Notes on a pro rata basis with such other First Lien Obligations by, at its option, (x) redeeming Notes as provided under Section 3.07 hereof or (y) purchasing Notes through open-market purchases or in privately negotiated transactions at market prices (which may be below par), or (b) make an offer (in accordance with the procedures set forth below for a Collateral Asset Sale Offer) to all Holders to purchase their Notes on a ratable basis with such other First Lien Obligations for no less than 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, thereon up to the principal amount of Notes to be repurchased; or

(B) to the extent such Net Proceeds are from an Asset Sale that does not constitute Collateral, to reduce Indebtedness (through a prepayment, repayment or purchase, as applicable) as follows:

(1) Obligations under a Credit Facility to the extent such Obligations were incurred under clause (i) of Section 4.09(b) hereof and, in the case of revolving obligations (other than

Obligations in respect of any asset-based credit facility), to correspondingly reduce commitments with respect thereto;

(2) Obligations under Secured Indebtedness (other than Indebtedness owed to the Lead Issuer or a Restricted Subsidiary), and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility), to correspondingly reduce commitments with respect thereto;

(3) Obligations under any Senior Indebtedness or pension obligations of the Lead Issuer or any Restricted Subsidiary (and, in the case of Senior Indebtedness that consists of revolving obligations (other than Obligations in respect of any asset-based credit facility), to correspondingly reduce any outstanding commitments with respect thereto); *provided* that if the Lead Issuer or any Restricted Subsidiary shall so reduce any Senior Indebtedness, the Lead Issuer or such Restricted Subsidiary will either (a) reduce Obligations under the Notes on a pro rata basis by, at its option, (x) redeeming Notes as provided under Section 3.07 hereof or (y) purchasing Notes through open-market purchases or in privately negotiated transactions at market prices (which may be below par), or (b) make an offer (in accordance with the procedures set forth in Sections 3.08 and 4.10(c) hereof) to all Holders to purchase their Notes on a ratable basis with such other Senior Indebtedness for no less than 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, thereon up to the principal amount of Notes to be repurchased;

(4) Obligations of a Restricted Subsidiary that is not an Issuer or a Guarantor, other than Indebtedness owed to the Lead Issuer or any Restricted Subsidiary, and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility), to correspondingly reduce commitments with respect thereto; or

(5) to the extent such Net Proceeds are from an Asset Sale of property or assets of a Restricted Subsidiary that is not an Issuer or a Guarantor, Obligations of an Issuer or a Guarantor other than Subordinated Indebtedness and other than Indebtedness owed to the Lead Issuer or any Restricted Subsidiary, and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility), to correspondingly reduce commitments with respect thereto; or

(ii) to make (A) an Investment in any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Lead Issuer or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes or continues to constitute a Restricted Subsidiary, (B) capital expenditures or (C) acquisitions of other properties or assets that, in each of (A), (B) and (C), are used or useful in a Similar Business or replace the businesses, properties and/or assets that are the subject of such Asset Sale; or

(iii) any combination of the foregoing;

*provided* that a binding commitment or letter of intent entered into not later than such 450th day shall be treated as a permitted application of the Net Proceeds from the date of such commitment or letter of intent so long as the Lead Issuer, or such Restricted Subsidiary enters into such commitment or letter of intent with the good faith expectation that



such Net Proceeds will be applied to satisfy such commitment or letter of intent within the later of such 450th day and 180 days after such commitment or letter of intent (an

“**Acceptable Commitment**”) or, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Lead Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a “**Second Commitment**”) within 180 days after such cancellation or termination; *provided, further*, that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Collateral Excess Proceeds or Excess Proceeds, as the case may be.

Notwithstanding any other provisions of this Section 4.10, (i) to the extent that the application of any or all of the Net Proceeds of any Asset Sale by the Lead Issuer or a Foreign Subsidiary (a “**Foreign Disposition**”) is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other organizational or administrative impediments from being repatriated to the United States, an amount equal to the portion of such Net Proceeds so affected will not be required to be applied in compliance with this Section 4.10, and such amounts may be retained by the Lead Issuer or the applicable Foreign Subsidiary; provided that if at any time within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, the applicable organizational document or agreement or the applicable other impediment, an amount equal to such amount of Net Proceeds so permitted to be repatriated will be promptly applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated whether or not they are repatriated) in compliance with this Section 4.10 and (ii) to the extent that the Lead Issuer has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Disposition could have a material adverse tax consequence with respect to such Net Proceeds (which for the avoidance of doubt, includes, but is not limited to, any prepayment whereby doing so the Lead Issuer, any Restricted Subsidiary or any of their respective Affiliates and/or their equityholders would incur a tax liability, including as a result of a tax dividend, a deemed dividend pursuant to Code Section 956 or a withholding tax), the Net Proceeds so affected may be retained by the Lead Issuer or the applicable Foreign Subsidiary and an amount equal to such Net Proceeds will not be required to be applied in compliance with this Section 4.10. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt, nothing in this Indenture shall be construed to require the Lead Issuer or any Subsidiary to repatriate cash.

(c) The Net Proceeds from an Asset Sale of Collateral (other than any amounts excluded from this Section 4.10 as set forth in the final paragraph of Section 4.10(b)) that are not invested or applied as provided and within the time period set forth in Section 4.10(b) will be deemed to constitute “**Collateral Excess Proceeds**”; *provided* that any amount of Net Proceeds offered to Holders of the Notes pursuant to clause (b)(i)(A)(2)(b) of this Section 4.10 shall not be deemed to be Collateral Excess Proceeds without regard to whether such offer is accepted by any Holders. When the aggregate amount of Collateral Excess Proceeds exceeds \$100.0 million (the “**Collateral Excess Proceeds Threshold**”), the Issuers shall make an offer (a “**Collateral Asset Sale Offer**”) to all Holders of the Notes and, if required or permitted by the terms of any other First Lien Obligations or Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral), to the holders of such other First Lien Obligations or other Obligations, to purchase the maximum aggregate principal amount (or accreted value, as applicable) of the Notes and such other First Lien Obligations or other Obligations that is, with respect to the Notes only, in an amount equal to \$2,000, or an integral multiple of \$1,000 in excess thereof, that may be purchased out of the Collateral Excess Proceeds at an offer price, in the case of the Notes, in cash in an amount equal to 100.0% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in

this Indenture, and in the case of such other First Lien Obligations or other Obligations, at the offer price required by the terms thereof, in accordance with the procedures set forth in the agreement(s) governing such other First

Lien Obligations or other Obligations. The Issuers will commence a Collateral Asset Sale Offer with respect to Collateral Excess Proceeds within 20 Business Days after the date that Collateral Excess Proceeds exceed the Collateral Excess Proceeds Threshold by delivering to the Holders the notice required pursuant to the terms of this Indenture, with a copy to the Trustee. The Issuers may satisfy the foregoing obligations with respect to any Net Proceeds from an Asset Sale by making a Collateral Asset Sale Offer with respect to such Net Proceeds prior to the time period that may be required by this Indenture with respect to all or a part of the available Net Proceeds (the “**Collateral Advance Portion**”) in advance of being required to do so by this Indenture (a “**Collateral Advance Offer**”).

To the extent that the aggregate amount (or accreted value, if applicable) of Notes and such other First Lien Obligations or Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of, as the case may be, tendered pursuant to a Collateral Asset Sale Offer is less than the amount offered in the Collateral Asset Sale Offer (or in the case of a Collateral Advance Offer, the Collateral Advance Portion), the Issuers may use any remaining Collateral Excess Proceeds (or in the case of a Collateral Advance Offer, the Collateral Advance Portion) (“**Declined Collateral Proceeds**”) for any purposes not otherwise prohibited under this Indenture. If the aggregate principal amount (or accreted value, if applicable) of Notes or such other First Lien Obligations or other Obligations, as the case may be, surrendered by such holders thereof exceeds the amount offered in the Collateral Asset Sale Offer (or in the case of a Collateral Advance Offer, the Collateral Advance Portion), the Issuers shall purchase the Notes (subject to applicable DTC procedures as to global notes) and such other First Lien Obligations or other Obligations, as the case may be, on a pro rata basis based on the aggregate principal amount (or accreted value, if applicable) of the Notes or such other First Lien Obligations or other Obligations, as the case may be, tendered with adjustments as necessary so that no Notes or such other First Lien Obligations or other Obligations, as the case may be, will be repurchased in part in an unauthorized denomination. Upon completion of any such Collateral Asset Sale Offer (or Collateral Advance Offer), the amount of Collateral Excess Proceeds (or in the case of a Collateral Advance Offer, the Collateral Advance Portion) that resulted in the requirement to make a Collateral Asset Sale Offer shall be reset to zero (regardless of whether there are any remaining Collateral Excess Proceeds (or Collateral Advance Portion) upon such completion). Upon consummation or expiration of any Collateral Asset Sale Offer (or Collateral Advance Offer), any remaining Net Proceeds shall not be deemed Collateral Excess Proceeds and the Issuers may use such Net Proceeds for any purpose not otherwise prohibited under this Indenture.

The Net Proceeds from an Asset Sale that does not constitute Collateral (other than any amounts excluded from this Section 4.10 as set forth in the final paragraph of Section 4.10(b)) that are not invested or applied as provided and within the time period set forth in Section 4.10(b) hereof will be deemed to constitute “**Excess Proceeds**”; *provided* that any amount of Net Proceeds offered to Holders of the Notes pursuant to clause (b)(i)(B)(3)(b) of this Section 4.10 shall not be deemed to be Excess Proceeds without regard to the whether such offer is accepted by any Holders. When the aggregate amount of Excess Proceeds exceeds \$100.0 million (the “**Excess Proceeds Threshold**”), the Issuers shall make an offer (an “**Asset Sale Offer**”) to all Holders of the Notes and, if required or permitted by the terms of any Indebtedness that ranks *pari passu* in right of payment with the Notes (“**Pari Passu Indebtedness**”), to the holders of such Pari Passu Indebtedness, to purchase the maximum aggregate principal amount (or accreted value, as applicable) of the Notes and such Pari Passu Indebtedness that is, with respect to the Notes only, in an amount equal to \$2,000, or an integral multiple of \$1,000 in excess thereof, that may be purchased out of the Excess Proceeds at an offer price, in the case of the Notes, in cash in an amount equal to 100.0% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture, and in the case of such Pari Passu Indebtedness, at the offer price required by the terms thereof, in accordance with the procedures set forth in the agreement(s)

governing such Pari Passu Indebtedness. The Issu- ers will commence an Asset Sale Offer with respect to Excess Proceeds within 20 Business Days after the date that Excess Proceeds exceed the Excess Proceeds Threshold by delivering to the Holders the notice

required pursuant to the terms of this Indenture, with a copy to the Trustee. The Issuers may satisfy the foregoing obligations with respect to any Net Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Proceeds prior to the time period that may be required by this Indenture with respect to all or a part of the available Net Proceeds (the “**Advance Portion**”) in advance of being required to do so by this Indenture (an “**Advance Offer**”).

To the extent that the aggregate amount (or accreted value, if applicable) of Notes and Pari Passu Indebtedness, as the case may be, tendered pursuant to an Asset Sale Offer is less than the amount offered in the Asset Sale Offer (or in the case of an Advance Offer, the Advance Portion), the Issuers may use any remaining Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) (“**Declined Proceeds**”) for any purposes not otherwise prohibited under this Indenture. If the aggregate principal amount (or accreted value, if applicable) of Notes or the Pari Passu Indebtedness, as the case may be, surrendered by such holders thereof exceeds the amount offered in the Asset Sale Offer (or in the case of an Advance Offer, the Advance Portion), the Issuers shall purchase the Notes (subject to applicable DTC procedures as to global notes) and such Pari Passu Indebtedness, as the case may be, on a pro rata basis based on the aggregate principal amount (or accreted value, if applicable) of the Notes or such Pari Passu Indebtedness, as the case may be, tendered with adjustments as necessary so that no Notes or Pari Passu Indebtedness, as the case may be, will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer (or Advance Offer), the amount of Excess Proceeds that resulted in the requirement to make an Asset Sale Offer shall be reset to zero (regardless of whether there are any remaining Excess Proceeds upon such completion). Upon consummation or expiration of any Asset Sale Offer, any remaining Net Proceeds shall not be deemed Excess Proceeds and the Issuers may use such Net Proceeds for any purpose not otherwise prohibited under this Indenture.

A Collateral Asset Sale Offer, Asset Sale Offer, Collateral Advance Offer or Advance Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, the Notes, Guarantees and/or Security Documents (but the Collateral Asset Sale Offer, Asset Sale Offer, Collateral Advance Offer or Advance Offer may not condition tenders on the delivery of such consents).

(d) Pending the final application of the amount of any Net Proceeds pursuant to this Section 4.10, the Lead Issuer and its Restricted Subsidiaries may temporarily reduce Indebtedness, or otherwise use such Net Proceeds in any manner not prohibited by this Indenture.

(e) The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to a Collateral Asset Sale Offer, an Asset Sale Offer, a Collateral Advance Offer or an Advance Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

The provisions of Section 3.08 and this Section 4.10 may be waived or modified with the written consent of the Holders of a majority in principal amount of all the then outstanding Notes.

#### **Section 4.11.** *Transactions with Affiliates.*

(a) The Lead Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets

from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Lead Issuer

(each of the foregoing, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of \$50.0 million at such time, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Lead Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Lead Issuer or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis or, if in the good faith judgment of the Lead Issuer, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Lead Issuer or such Restricted Subsidiary from a financial point of view and when such transaction is taken in its entirety; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$150.0 million at such time, the terms of such transaction have been approved by a majority of the members of the Board of the Lead Issuer or any direct or indirect parent of the Lead Issuer.

Any Affiliate Transaction shall be deemed to have satisfied the requirements of clause (ii) of this Section 4.11(a) if such Affiliate Transaction is approved by a majority of the Disinterested Directors of the Lead Issuer or any direct or indirect parent of the Lead Issuer, if any.

(b) The provisions of Section 4.11(a) hereof shall not apply to the following:

(i) (A) transactions between or among the Lead Issuer or any of its Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) and (B) any merger, amalgamation or consolidation of the Lead Issuer into any direct or indirect parent company; *provided* that such merger, amalgamation or consolidation is otherwise consummated in compliance with the terms of this Indenture;

(ii) Restricted Payments permitted by Section 4.07 hereof (including any transaction specifically excluded from the definition of the term “Restricted Payments”) (other than pursuant to Sections 4.07(b)(xiii) and (xv)(I)) and Permitted Investments;

(iii) [Reserved];

(iv) (A) employment agreements, employee benefit and incentive compensation plans and arrangements, (B) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided on behalf of or for the benefit of, future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries, including in connection with the Transactions and (C) compensation and other customary arrangements relating to the operation of the business of the Lead Issuer, any of its direct or indirect parent companies and its Restricted Subsidiaries;



(v) transactions in which the Lead Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Lead Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable, when taken as a whole, to the Lead

Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Lead Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(vi) any agreement or arrangement as in effect as of the Issue Date, or any amendment or replacement thereto (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Lead Issuer to the Holders when taken as a whole as compared to the applicable agreement or arrangement as in effect on the Issue Date);

(vii) any Intercompany License Agreements;

(viii) the existence of, or the performance by the Lead Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders, investor rights or similar agreement (including any registration rights agreement or purchase agreement related thereto) to which it (or any parent company of the Lead Issuer) is a party as of the Issue Date and any similar agreements which it (or any parent company of the Lead Issuer) may enter into thereafter; *provided*, either (a) the terms of any such amendment or new agreement are not otherwise, when taken as a whole, materially disadvantageous in the good faith judgment of the Lead Issuer to the Holders than those in effect on the Issue Date or (b) the terms of such amendment or new agreement, in the good faith judgment of the Lead Issuer, are customary for such arrangements and do not have a material, adverse effect on the business, financial condition or results of operations of the Lead Issuer and its Restricted Subsidiaries taken as a whole;

(ix) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(x) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services or providers of employees or other labor that are Affiliates, in each case in the ordinary course of business or that are consistent with past practice and otherwise in compliance with the terms of this Indenture which are fair to the Lead Issuer and its Restricted Subsidiaries, in the reasonable determination of the Lead Issuer, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(xi) the issuance or transfer of (A) Equity Interests (other than Disqualified Stock) of the Lead Issuer to any direct or indirect parent company of the Lead Issuer or to any Permitted Holder or to any employee, director, officer, manager, member, partner or consultants (or their respective Affiliates or Immediate Family Members) of the Lead Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and (B) directors' qualifying shares and shares issued to foreign nationals as required by applicable law;

(xii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets, or other transactions, in connection with any Qualified Securitization Facility;

(xiii) payments by the Lead Issuer or any of its Restricted Subsidiaries to the Investors made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment

banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by the Lead Issuer in good faith;

(xiv) payments and Indebtedness and Disqualified Stock (and cancellation of any thereof) of the Lead Issuer and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director,

officer, manager, member, partner or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement that are, in each case, approved by the Lead Issuer in good faith; and any employment agreements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by the Lead Issuer in good faith;

(xv) (A) investments by Affiliates in securities or loans or other Indebtedness of the Lead Issuer or any of its Restricted Subsidiaries (and payment of out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Lead Issuer or such Restricted Subsidiary generally to other investors on the same or more favorable terms, and (B) payments to Affiliates in respect of securities or loans or other Indebtedness of the Lead Issuer or any of its Restricted Subsidiaries contemplated in the foregoing subclause (A) or that were acquired from Persons other than the Lead Issuer and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;

(xvi) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice (including, without limitation, any cash management activities related thereto);

(xvii) payments by the Lead Issuer (and any direct or indirect parent company thereof) and its Subsidiaries pursuant to, or the entry into, tax sharing agreements among The Lead Issuer (and any such parent company) and its Subsidiaries, to the extent such payments are permitted under clause (xx) of Section 4.07(b) hereof;

(xviii) any lease entered into between The Lead Issuer or any Restricted Subsidiary, as lessee, and any Affiliate of The Lead Issuer, as lessor, which is approved by The Lead Issuer in good faith;

(xix) intellectual property licenses and research and development agreements in the ordinary course of business or consistent with past practice;

(xx) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equityholders of the Lead Issuer or any direct or indirect parent thereof pursuant to any equityholders, registration rights or similar agreements;

(xxi) the pledge of Equity Interests of any Unrestricted Subsidiary to lenders to support the Indebtedness of such Unrestricted Subsidiary owed to such lenders;

(xxii) Permitted Intercompany Activities and related transactions;

(xxiii) (A) any transactions with a Person which would constitute an Affiliate Transaction solely because the Lead Issuer or its Restricted Subsidiary owns an equity interest in or otherwise controls such

Person or (B) transactions with a Person which would constitute an Affiliate Transaction solely because a director of such other Person is also a director of tthe Lead Issuer or

any direct or indirect parent company; *provided*, that such director abstains from voting as a director of the Lead Issuer or such direct or indirect parent company, as the case may be, on any matter including such other Person;

(xxiv) contemporaneous purchases and/or sales by (a) the Lead Issuer or any of its Restricted Subsidiaries and (b) an Affiliate of the Lead Issuer, of assets, Capital Stock, bonds, notes, debentures or other debt securities, and bank loans, participations or similar obligations of third parties at substantially the same price; and

(xxv) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium.

**Section 4.12. *Liens.*** The Issuers shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) (each, a “**Subject Lien**”) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of the Issuers or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(a) in the case of Subject Liens on any Collateral, such Subject Lien is a Permitted Lien; and

(b) in the case of any Subject Lien on any asset or property that is not Collateral,  
(i) the Notes (or a Guarantee in the case of Subject Liens on assets or property of a Guarantor) are equally and ratably secured with (or secured on a senior basis to) the Obligations secured by such Subject Lien until such time as such Obligations are no longer secured by such Subject Lien (provided that, in the case such Subject Lien secures any Subordinated Indebtedness the Notes or Guarantee are secured on a senior basis to such Obligations), or  
(ii) such Subject Lien is a Permitted Lien.

Any Lien created for the benefit of the Holders of the Notes pursuant to clause (b) of this Section 4.12 shall be deemed automatically and unconditionally released and discharged upon the release and discharge of the Subject Lien that gave rise to the obligation to secure the Notes. In addition, in the event that a Subject Lien is or becomes a Permitted Lien, the Lead Issuer may, at its option and without consent from any Holder, elect to release and discharge any Lien created for the benefit of the Holders pursuant to the preceding paragraph in respect of such Subject Lien.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “**Increased Amount**” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

**Section 4.13. *Company Existence.*** Subject to Article 5 hereof, Holdings shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, and the corporate, partnership, limited

liability company or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of Holdings or any such Restricted Subsidiary; *provided* that Holdings shall not be required to preserve the

corporate, partnership or other existence of its Restricted Subsidiaries, if Holdings in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of Holdings and its Restricted Subsidiaries, taken as a whole. For the avoidance of doubt, Holdings and its Restricted Subsidiaries will be permitted to change their organizational form.

**Section 4.14.** *Offer to Repurchase Upon Change of Control.* If a Change of Control occurs after the Issue Date, unless the Issuers have previously or concurrently sent a redemption notice with respect to all the outstanding Notes as described under Section 3.07 hereof, the Issuers shall make an offer to purchase all of the Notes pursuant to the offer described below (the “**Change of Control Offer**”) at a price in cash (the “**Change of Control Payment**”) equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of purchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date falling prior to or on the Change of Control Payment Date. Within 60 days following any Change of Control, the Issuers will send (or cause to be sent) notice of such Change of Control Offer electronically or by first-class mail, with a copy to the Trustee, to each Holder to the address of such Holder appearing in the Note Register or otherwise in accordance with the Applicable Procedures with the following information:

- (a) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuers;
- (b) the purchase price and the purchase date, which will be no earlier than 10 days nor later than 60 days from the date such notice is sent (the “**Change of Control Payment Date**”), except in the case of a conditional Change of Control Offer made in advance of a Change of Control in accordance with clause (l) of this Section 4.14;
- (c) that any Note not properly tendered will remain outstanding and continue to accrue interest;
- (d) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on the Change of Control Payment Date;
- (e) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed or otherwise in accordance with the procedures of DTC to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (f) that Holders whose Notes are being purchased only in part shall be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to at least \$2,000 or any integral multiple of \$1,000 in excess thereof;
- (g) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control and shall describe each



such condition, and, if applicable, shall state that, in the Issuers' discretion, the Change of Control Payment Date may be delayed, from time to time, until such time (including more than 60 days after the notice is sent) as any or all such conditions shall be satisfied or

waived, or that such repurchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed, or such notice or offer may be rescinded at any time in the Issuers' sole discretion if the Issuers determine that any or all of such conditions will not be satisfied or waived;

(h) any other instructions, as determined by the Lead Issuer, consistent with this Section 4.14 that a Holder must follow; and

(i) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes; *provided* that the applicable Paying Agent receives, not later than the close of business on the tenth Business Day prior to the expiration date of the Change of Control Offer, a facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes, or a specified portion thereof, and its election to have such Notes purchased.

While the Notes are in global form and the Issuers make an offer to purchase all of the Notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Notes or withdraw such election through the facilities of DTC subject to its applicable rules and regulations.

The notice, if delivered electronically or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is delivered or mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities

laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations described in this Indenture by virtue thereof.

(j) On the Change of Control Payment Date, the Issuers shall, to the extent permitted by law:

(i) accept for payment all Notes issued by it or portions thereof validly tendered pursuant to the Change of Control Offer;

(ii) deposit with the applicable Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered and not validly withdrawn; and

(iii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(k) The Issuers shall not be required to make a Change of Control Offer following a Change of Control if (i) a third party makes the Change of Control Offer in the manner, at the

times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not validly withdrawn under such Change of Control Offer or (ii) in connection with or in contemplation of any Change of Control, the Issuers (or any Affiliate of the Issuers) has made an offer to purchase (an “**Alternate Offer**”) any and all Notes validly tendered at a cash price equal to or higher than the Change of Control Payment and has purchased all Notes properly tendered in accordance with the terms of the Alternate Offer.

(l) Notwithstanding anything to the contrary herein, a Change of Control Offer or Alternate Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer or Alternate Offer.

(m) A Change of Control Offer or Alternate Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, the Notes, Guarantees and/or Security Documents (but the Change of Control Offer may not condition tenders on the delivery of such consents).

(n) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06 hereof, and references therein to “redeem,” “redemption,” “Redemption Date” and similar words shall be deemed to refer to “purchase,” “repurchase” and “Change of Control Payment Date” and similar words, as applicable.

The provisions of this Section 4.14, including the definition of “Change of Control”, may be waived or modified with the written consent of the Holders of a majority in principal amount of all the then outstanding Notes.

**Section 4.15.** *Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.* The Lead Issuer shall not permit any of its Wholly Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly Owned Subsidiaries if such non-Wholly Owned Subsidiaries guarantee other Capital Markets Debt Securities of an Issuer or any Subsidiary Guarantor), other than an Issuer, a Subsidiary Guarantor, a Broker Dealer Subsidiary, a Captive Insurance Subsidiary, a Foreign Subsidiary or a Securitization Subsidiary, to guarantee the payment of (i) any Credit Facility or Capital Markets Debt Securities incurred under Section 4.09(b)(i) hereof unless:

(a) such Restricted Subsidiary within 60 days after the guarantee of such Indebtedness executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, providing for a Guarantee by such Restricted Subsidiary, and joinders to the Security Documents or new Security Documents and takes all actions thereunder to perfect the liens created thereunder; provided that with respect to a guarantee of Indebtedness of an Issuer or any Subsidiary Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Subsidiary Guarantor’s Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes, and joinders to the Security Documents or new Security Documents, together with any filings and agreements required by the Security Documents to create or perfect the security interests for the benefit of the Holders in

the Collateral of such Subsidiary, including all actions (if any) required to be taken with respect to such Restricted Subsidiary in order to satisfy the Collateral Requirement; and

(b) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other applicable rights against Holdings, an Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

*provided* that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary. The Lead Issuer may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to provide a Guarantee and to become a Subsidiary Guarantor, in which case such Subsidiary shall not be required to comply with the 60 day period described in clause (a) of this Section 4.15, and to later cause the release of such Guarantee, to the extent such Subsidiary is at the time of such release not required to provide a Guarantee pursuant to the above provisions.

**Section 4.16.** *[Reserved]*.

**Section 4.17.** *Suspension of Covenants.*

(a) If on any date following the Issue Date, (i) the Notes have an Investment Grade Rating from either of the Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “**Covenant Suspension Event**” and the date thereof being referred to as the “**Suspension Date**”) then, Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.15, clause (iii) of Section 5.01(a) and Section 5.01(f) hereof shall no longer be applicable to the Notes (collectively, the “**Suspended Covenants**”) until the occurrence of the Reversion Date.

(b) During any period that the foregoing covenants have been suspended, the Lead Issuer may not designate any of its Subsidiaries as Unrestricted Subsidiaries.

(c) In the event that the Lead Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date (the “**Reversion Date**”) both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating (in each case, to the extent given an Investment Grade Rating by such Rating Agency), then the Lead Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events. The period of time between the Suspension Date and the Reversion Date is referred to in this Indenture as the “**Suspension Period.**” The Guarantees of the Subsidiary Guarantors shall be suspended during the Suspension Period. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Collateral Excess Proceeds and Excess Proceeds from any Asset Sales shall be reset to zero.

(d) During the Suspension Period, the Lead Issuer and its Restricted Subsidiaries will be entitled to incur Liens to the extent provided for under Section 4.12 hereof (including, without limitation, Permitted Liens) and any Permitted Liens which may refer to one or more Suspended Covenants shall be interpreted as though such applicable Suspended Covenant(s) continued to be applicable during the Suspension Period (but solely for purposes of Section 4.12 hereof and the definition of “Permitted Liens” and for no other covenant).

(e) Notwithstanding the foregoing, in the event of any such reinstatement, no action taken or omitted to be taken by the Lead Issuer or any of its Restricted Subsidiaries prior to such reinstatement will give rise to a Default or Event of Default under this Indenture with respect to the Notes, and no Default or

Event of Default will be deemed to exist or have occurred as a result of any failure by the Lead Issuer or any Restricted Subsidiary to comply with any of the Suspended Covenants during the Suspension Period; *provided*, that (i) with respect to Restricted Payments made after such reinstatement, the amount available to be made as Restricted Payments will be calculated as though Section 4.07 hereof had been in effect prior to, but not during, the Suspension Period; (ii) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to clause (iii) of Section 4.09(b) hereof; (iii) any Affiliate Transaction entered into after such re-instatement pursuant to an agreement entered into during any Suspension Period shall be deemed to be permitted pursuant to clause (vi) of Section 4.11(b) hereof; (iv) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not an Issuer or a Guarantor to take any action described in clauses (i) through (iii) of Section 4.08(a) hereof that becomes effective during any Suspension Period shall be deemed to be permitted pursuant to clause (i) of Section 4.08(b) hereof; (v) no Subsidiary of the Lead Issuer shall be required to comply with Section 4.15 hereof after such reinstatement with respect to any guarantee or obligation entered into by such Subsidiary during any Suspension Period; and (vi) all Investments made during the Suspension Period will be classified to have been made under clause (e) of the definition of “Permitted Investments.”

(f) Notwithstanding that the Suspended Covenants may be reinstated after the Reversion Date, (1) no Default, Event of Default or breach of any kind will be deemed to exist under this Indenture, the Notes or the Guarantees with respect to the Suspended Covenants, and none of the Lead Issuer or any of its Subsidiaries shall bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during any Suspension Period, in each case as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time based solely on any action taken or event that occurred during the Suspension Period), and (2) following a Reversion Date, the Lead Issuer and each Restricted Subsidiary will be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period and to consummate the transactions contemplated thereby.

(g) Neither the Trustee nor any Agent shall have any duty to (i) monitor the ratings of the Notes, (ii) ascertain whether a Covenant Suspension Event or Reversion Date have occurred, or (iii) notify the Holders of any of the foregoing.

#### **Section 4.18.** *After-Acquired Collateral.*

(a) From and after the Issue Date, and subject to certain limitations and exceptions, if any of the Issuers or any Guarantor acquires any property or rights which are of a type constituting Collateral under any Security Document (excluding, for the avoidance of doubt, any Excluded Assets or assets expressly not required to be Collateral pursuant to this Indenture or the Security Documents), it will be required to execute and deliver such security documents, instruments, financing statements and such certificates as are required under this Indenture or any Security Document to vest in the Notes Collateral Agent for the benefit of the Notes Secured Parties, as applicable, a perfected security interest (subject to Permitted Liens) in such after-acquired collateral and to take such actions to add such after-acquired collateral to the Collateral, including satisfying the Collateral Requirement with respect to such after-acquired collateral, including and thereupon all provisions of this Indenture and the Security Documents relating to the Collateral shall be deemed to relate to such after-acquired collateral to the same extent and with the same force and effect.



(b) Notwithstanding the foregoing, opinions of counsel will not be required in connection with the addition of new Guarantors or in connection with such Guarantors entering into the Security

Documents or to vest in the Notes Collateral Agent a perfected security interest in such after-acquired collateral.

(c) With respect to any Collateral constituting Material Real Property acquired after the Issue Date, the Issuers shall cause the Collateral Requirement to be satisfied within 45 days of the acquisition of such Material Real Property or such longer period as permitted under the Senior Secured Credit Facilities or as extended by the Bank Collateral Agent.

**Section 4.19.** *Post-Closing Covenant.*

Within 90 days after the Issue Date (or such longer period as permitted under the Senior Secured Credit Facilities or as extended by the Bank Collateral Agent), the Issuer shall, and shall cause each of its Restricted Subsidiaries to, cause all insurance policies related to any property or business of the Issuer or such Restricted Subsidiary required to be delivered pursuant to the Senior Secured Credit Facilities to name the Notes Collateral Agent as additional insured or loss payee, as appropriate, in customary form.

ARTICLE 5 SUCCESSORS

**Section 5.01.** *Merger, Consolidation or Sale of All or Substantially All Assets.*

(a) Neither Holdings nor either of the Issuers may consolidate or merge with or into or wind up into (whether or not Holdings or an Issuer, as applicable, is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) Holdings or such Issuer, as the case may be, is the surviving Person or (B) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings or such Issuer, as the case may be) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (such Person being herein called the “**Successor Company**”), (1) expressly assumes, in the case of Holdings, all the obligations of Holdings under this Indenture, its Guarantee and the applicable Security Documents, or, in the case of an Issuer, all of the obligations of such Issuer under this Indenture, the Notes and the applicable Security Documents, in each case, pursuant to supplemental indentures or other applicable documents or instruments and (2) is a Person (which Person shall be a corporation, in the case of CSLS) organized or existing under the laws of the jurisdiction of organization of Holdings or such Issuer, as applicable, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof;

(ii) immediately after such transaction, no Event of Default exists;

(iii) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four-quarter period:

(A) the Lead Issuer or the Successor Company, as applicable, would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to Section 4.09(a) hereof; or



(B) either (x) the Fixed Charge Coverage Ratio for the Lead Issuer and its Restricted Subsidiaries or the Successor Company and its Restricted Subsidiaries, as applicable, would be equal to or greater than the Fixed Charge Coverage Ratio for Holdings and its Restricted Subsidiaries immediately prior to such transaction or (y) the Consolidated Total Net Leverage Ratio for the Lead Issuer and its Restricted Subsidiaries or the Successor Company and its Restricted Subsidiaries, as applicable, would be equal to or less than the Consolidated Total Net Leverage Ratio for the Lead Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(iv) the Lead Issuer or, if applicable, the Successor Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; and

(v) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into Holdings or an Issuer, as applicable, are assets of the type which would constitute Collateral under the Security Documents, Holdings, such Issuer or the Successor Company, as applicable, will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Security Documents in the manner and to the extent required in this Indenture or the applicable Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the applicable Security Documents.

(b) The Successor Company shall succeed to, and be substituted for, Holdings or the relevant Issuer, as the case may be, under this Indenture, the Guarantees and the Notes, as applicable, and Holdings or the relevant Issuer, as applicable, will automatically be released and discharged from its obligations under this Indenture, the Guarantees and the Notes, as applicable.

(c) Notwithstanding the foregoing, without complying with clauses (ii) and (iii) of Section 5.01(a) hereof:

(i) an Issuer may consolidate or amalgamate with or merge with or into or transfer all or part of its properties and assets to an Issuer or a Subsidiary Guarantor;

(ii) an Issuer may consolidate or amalgamate with or merge with or into or transfer all or part of its properties and assets to a Guarantor;

(iii) Holdings may consolidate or amalgamate with or merge with or into or transfer all or part of its properties and assets to any Person; and

(iv) Holdings or an Issuer may merge with an Affiliate of Holdings or an Issuer solely for the purpose of (a) reorganizing Holdings or such Issuer in any other jurisdiction or for the purpose of reorganizing such Issuer in the United States, any state thereof, the District of Columbia or any territory thereof or (b) formation of or collapsing a holding company structure, so long as, in each case of subclauses (a) and (b), the aggregate amount of Indebtedness of the Lead Issuer and its Restricted Subsidiaries is not increased thereby.

Notwithstanding the foregoing, any Restricted Subsidiary (other than the Issuers) may consolidate or amalgamate with or merge with or into or transfer all or part of its properties and assets to an Issuer or a Restricted Subsidiary without

complying with the foregoing covenant (provided that, for the avoidance of doubt, such Restricted Subsidiary, if it is a Subsidiary Guarantor, must comply with Section 5.01(f) hereof).

(d) [Reserved].

(e) [Reserved].

(f) Subject to Section 10.06 hereof, no Subsidiary Guarantor shall, and the Lead Issuer shall not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) (1) such Subsidiary Guarantor is the surviving Person or (2) the Person formed by or surviving any such consolidation or merger (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (such Person being herein called the “**Successor Person**”) expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture, the applicable Security Documents and such Subsidiary Guarantor’s related Guarantee pursuant to supplemental indentures or other applicable documents or instruments;

(B) immediately after such transaction, no Event of Default exists; and

(C) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Subsidiary Guarantor are assets of the type which would constitute collateral under the Security Documents, such Subsidiary Guarantor or the Successor Person will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Security Documents in the manner and to the extent required in this Indenture or the applicable Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the applicable Security Documents; or

(ii) the transaction is not prohibited by Section 4.10(a) hereof; or

(iii) in the case of assets comprising Equity Interests of Subsidiaries that are not Subsidiary Guarantors, such Equity Interests are sold, assigned, transferred, leased, conveyed or otherwise disposed of to one or more Restricted Subsidiaries.

(g) Subject to Section 10.06 hereof, the Successor Person shall succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture, the Security Documents and such Subsidiary Guarantor’s Guarantee, and such Subsidiary Guarantor shall automatically be released and discharged from its obligations under this Indenture, the Security Documents and such Subsidiary Guarantor’s Guarantee. Notwithstanding the foregoing, any Subsidiary Guarantor may (1) merge or consolidate with or into, wind up into or transfer all or part of its properties and assets to a Guarantor or an Issuer (or a Restricted Subsidiary that is not a Subsidiary Guarantor if that Restricted Subsidiary becomes a Subsidiary Guarantor), (2) merge with an Affiliate of the Lead Issuer solely for the purpose of reorganizing the Subsidiary Guarantor in another jurisdiction, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or (4) liquidate or dissolve or change its legal form if the Lead Issuer determines in good faith that such action is in the best interests of the

Lead Issuer, in each case, without regard to the requirements set forth in Section 5.01(f) hereof. Notwithstanding anything to the contrary in this Section 5.01, Holdings may contribute Capital Stock of any or all of its Subsidiaries to any Guarantor.

- (h) Notwithstanding the foregoing, this Section 5.01 shall not apply to the Transactions.

**Section 5.02.** *Successor Person Substituted.* Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of Holdings, an Issuer or a Guarantor in accordance with Section 5.01 hereof, the successor Person formed by such consolidation or into or with which Holdings, such Issuer or such Guarantor, as applicable, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to Holdings, such Issuer or such Guarantor, as applicable, shall refer instead to the successor Person, as applicable, and not to Holdings, such Issuer or such Guarantor, as applicable), and may exercise every right and power of Holdings, such Issuer or such Guarantor, as applicable, under this Indenture with the same effect as if such successor Person, as applicable, had been named as Holdings, such Issuer or such Guarantor, as applicable, herein; *provided* that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest on the Notes, except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of such Issuer's assets that meets the requirements of Section 5.01 hereof.

## ARTICLE 6 DEFAULTS AND REMEDIES

### **Section 6.01.** *Events of Default.*

(a) An "**Event of Default**," wherever used herein, means any one of the following events:

(i) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(ii) default for 30 days or more in the payment when due of interest on or with respect to the Notes;

(iii) subject to Section 4.03(e) hereof, failure by the Issuers or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less than 30% in aggregate principal amount of the then outstanding Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clause (i) or (ii) above) contained in this Indenture or the Notes;

(iv) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Lead Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Lead Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Lead Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and



(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which

has been so accelerated, aggregate \$100.0 million (or its foreign currency equivalent) or more outstanding;

(v) failure by the Lead Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of \$100.0 million (net of amounts covered by insurance policies issued by reputable insurance companies), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(vi) the Lead Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements of Holdings for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), pursuant to or within the meaning of any Bankruptcy Law (in each case, with respect to only the initiation of any of the listed actions below and not with respect to subsequent actions taken in furtherance of such actions once initiated):

(A) initiates proceedings to be adjudicated bankrupt or insolvent;

(B) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(C) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due;

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (in each case, with respect to only the initiation of any of the listed actions below and not with respect to subsequent actions taken in furtherance of such actions once initiated):

(A) is for relief against the Lead Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements of the Lead Issuer for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), in a proceeding in which the Lead Issuer or any such Subsidiary or such group of Restricted Subsidiaries is to be adjudicated bankrupt or insolvent;

(B) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Lead Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that

together (as of the latest consolidated financial statements the Lead Issuer for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), or for all or substantially all of the property of the Lead Issuer or any such Significant Subsidiary or such group of Restricted Subsidiaries; or

(C) orders the liquidation of the Lead Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements of the Lead Issuer for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary);

and the order or decree remains unstayed and in effect for 60 consecutive days;

(viii) the Guarantee of Holdings or any Subsidiary Guarantor that is a Significant Subsidiary (or any group of Subsidiary Guarantors that together (as of the latest consolidated financial statements for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary) shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of the Lead Issuer or any Subsidiary Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Subsidiary Guarantors that together (as of the latest consolidated financial statements for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture;

(ix) (A) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (unless perfection is expressly not required by this Indenture or the Security Documents) other than (1) in accordance with the terms of the relevant Security Document and this Indenture, (2) the satisfaction in full of all Obligations under this Secured Indenture and the Notes or (3) any loss of perfection that results from the failure of the Notes Collateral Agent to maintain possession of certificates delivered to it representing securities pledged under the Security Documents and (B) such default continues for 30 days after receipt of written notice given by the Trustee or the Holders of not less than 30% in aggregate principal amount of the then outstanding Notes; and

(x) the Issuers or any Subsidiary Guarantor that is a Significant Subsidiary (or any group of Subsidiary Guarantors that together (as of the latest consolidated financial statements for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary) shall assert, in any pleading in any court of competent jurisdiction, that any security interest in any Security Document is invalid or unenforceable.

(b) In the event of any Event of Default specified in clause (iv) of Section 6.01(a) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged;

(ii) the requisite number of holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured.

**Section 6.02.** *Acceleration.* If any Event of Default (other than an Event of Default of the type specified in clause (vi) or (vii) of Section 6.01(a) hereof) occurs and is continuing under this Indenture, the Trustee or the Holders of not less than 30% in aggregate principal amount of all the then outstanding

Notes may, by notice to the Lead Issuer and the Trustee (if given by Holders), in either case specifying in such notice the respective Event of Default and that such notice is a “notice of acceleration,” declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately.

Upon the effectiveness of such declaration, such principal of and premium, if any, and interest will be due and payable immediately.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (vi) or (vii) of Section 6.01(a) hereof, all outstanding Notes will become due and payable without further action or notice. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest.

**Section 6.03. *Other Remedies.*** If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

**Section 6.04. *Waiver of Past Defaults.*** Holders of a majority in aggregate principal amount of all the Notes then outstanding, by written notice to the Trustee (with a copy to the Lead Issuer; *provided* that any waiver or rescission under this Section 6.04 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the Lead Issuer) may on behalf of the Holders of all of the Notes waive any existing Default and its consequences under this Indenture and the Security Documents (including in connection with a Collateral Asset Sale Offer, a Collateral Advance Offer, an Asset Sale Offer, an Advance Offer or a Change of Control Offer) and rescind any acceleration with respect to the Notes and its consequences under this Indenture and the Security Documents (except if such rescission would conflict with any judgment of a court of competent jurisdiction and except a continuing Default in the payment of interest on, premium, if any, or the principal of, any Note held by a non-consenting Holder). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture and the Security Documents; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto, and prior to such waiver, the Issuer has paid or deposited with the Trustee, a sum sufficient to pay all sums paid or advanced by the Trustee, Agents or Notes Collateral Agent hereunder and the compensation, expenses, disbursements and advances of the Indenture Trustee, Agents or Notes Collateral Agent and their respective agents and counsel.

**Section 6.05. *Control by Majority.*** Subject to Section 7.01(e) hereof, the Holders of a majority in aggregate principal amount of all the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Notes Collateral Agent or of exercising any trust or power conferred on the Trustee or the Notes Collateral Agent, and the Trustee or the Notes Collateral Agent, as applicable, may take any other action deemed proper by the Trustee or the Notes Collateral Agent that is not inconsistent with such direction. The Trustee or the Notes Collateral Agent, as applicable, however, may refuse to follow any direction that

conflicts with law or this Indenture or that the Trustee or the Notes Collateral Agent, as applicable, determines is unduly prejudicial to the rights of any other Holder of a Note (it being understood that neither the Trustee nor the

Notes Collateral Agent shall have any duty to make a determination as to whether a direction is unduly prejudicial to the rights of a Holder) or that would involve the Trustee or the Notes Collateral Agent, as applicable, in personal liability and may take any other action that is not inconsistent with any such direction received from Holders of the Notes. Prior to taking any action hereunder, the Trustee or the Notes Collateral Agent shall be entitled to indemnification and/or security satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

**Section 6.06.** *Limitation on Suits.* Except to enforce the right to receive payment of principal, premium (if any) or interest when due on or after the respective due dates expressed in an outstanding Note, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

- (a) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (b) the Holders of at least 30% in the aggregate principal amount of the then outstanding Notes have requested in writing the Trustee to pursue the remedy;
- (c) Holders of the Notes have offered the Trustee security and/or indemnity satisfactory to it against any loss, liability or expense;
- (d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security and/or indemnity; and
- (e) the Holders of a majority in principal amount of the then outstanding Notes have not given the Trustee a direction inconsistent with such written request within such 60-day period.

**Section 6.07.** *Right of Holders to Sue for Payment.* Notwithstanding any other provision of this Indenture, the contractual right expressly set forth in this Indenture or the Notes of any Holder of a Note to bring suit for the enforcement of any payment on or with respect to such Holder's Notes on or after the respective due dates expressed in this Indenture or the Notes, shall not be amended without the consent of such Holder.

**Section 6.08.** *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal, if applicable, and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

**Section 6.09.** *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.



**Section 6.10.** *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right

or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 6.11. *Delay or Omission Not Waiver.*** No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein.

Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

**Section 6.12. *Trustee May File Proofs of Claim.*** The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuers or any other obligor upon the Notes (including the Guarantors), their creditors or their property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**Section 6.13. *Priorities.*** Subject to the First Lien Intercreditor Agreement, if the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

(a) FIRST, to the Trustee, the Agents and to the Notes Collateral Agent, in each case, and their respective agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee, the Agents and the Notes Collateral Agent and the costs and expenses of collection;

(b) SECOND, to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

(c) THIRD, to the Issuers or to such party as a court of competent jurisdiction shall direct including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.13.

**Section 6.14.** *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10.0% in principal amount of the then outstanding Notes.

## ARTICLE 7 TRUSTEE AND AGENTS

### **Section 7.01.** *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants, duties or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of willful misconduct or bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not investigate or confirm the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.02, 6.04 or 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01 and Section 7.02(f).

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless the Holders have offered to the Trustee indemnity and/or security satisfactory to the Trustee against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Lead Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

**Section 7.02. *Rights of Trustee.***

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Lead Issuer and its Restricted Subsidiaries, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from an Issuer shall be sufficient if signed by an Officer of the such Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if an indemnity and/or security satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default

or Event of Default is received by the Trustee at the Corporate Trust Office, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, punitive, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Agent, custodian and other Person employed to act hereunder, including the Notes Collateral Agent.

(j) [reserved].

(k) Delivery of reports, information and documents (including, without limitation, reports contemplated under Section 4.03 hereof) to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(l) The permissive rights of the Trustee to take certain actions under this Indenture shall not be construed as a duty unless so specified herein.

(m) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of not less than a majority in principal amount of the Notes at the time outstanding, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Lead Issuer, personally or by agent or attorney, at the expense of the Issuers and shall incur no liability of any kind by reason of such inquiry or investigation.

(n) The Trustee may request that the Lead Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(o) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; loss or malfunction of utilities, computer (hardware or software) or communication services; strikes or similar labor disputes; and acts of civil or military authorities and governmental action.

(p) The Trustee shall have no duty to inquire as to the performance of the Lead Issuer with respect to the covenants contained in Article 4 or to make any calculation in connection therewith or in connection with any redemption of the Notes. In addition, except as otherwise expressly provided herein, the Trustee shall have no obligation



to monitor or verify compliance by any Issuer or any Guarantor with any other obligation or covenant under this Indenture or the unavailability of the Federal Reserve Bank wire or facsimile or other wire communication facility.

(q) The Trustee shall not have any responsibility for the validity, perfection, priority, filing, continuation or enforceability of any Lien or security interest and shall have no obligations to take any action to procure or maintain such validity, perfection, priority, filing, continuation or enforceability (it being understood that such responsibility and obligation are the Issuers’).

(r) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

**Section 7.03. *Individual Rights of Trustee.*** The Trustee may retain professional advisors to assist it in performing its duties under this Indenture. The Trustee may consult with such professional advisors or with counsel, and the advice or opinion of such professional advisors or counsel with respect to legal or other matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any of their Affiliates with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

**Section 7.04. *Trustee’s Disclaimer.*** The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers’ use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers’ direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

The Trustee does not assume any responsibility for any failure or delay in performance or any breach by the Issuers or any other Grantor under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents. The Trustee shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in this Indenture, the Security Documents, the Intercreditor Agreements or in any certificate, report, statement, or other document referred to or provided for in, or received by the Trustee under or in connection with, this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or any Security Document; the execution, validity, genuineness, effectiveness or enforceability of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and any Security Documents of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Obligations under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents.

**Section 7.05. *Notice of Defaults.*** If a Default occurs and is continuing and if it is known to a Responsible Officer of the Trustee, the Trustee shall deliver to Holders a notice of the Default within 90 days after it occurs, unless such Default shall have been cured or waived, or if discovered after 90 days, promptly thereafter. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal,

premium, if any, or interest, if it determines that withhold- ing notice is in their interest. The Trustee shall not be deemed to have notice or charged with knowledge of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge

thereof or unless written notice of any event which is in fact such a default is received from the Issuer or any Holders of such Notes by the Trustee at the Corporate Trust Office of the Trustee, and such notice references such Notes, the Issuer and this Indenture.

**Section 7.06. Compensation and Indemnity.** The Issuers and the Guarantors, jointly and severally, shall pay to the Trustee, the Notes Collateral Agent and the Agents from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's, the Notes Collateral Agent's and the Agents' compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee, the Notes Collateral Agent and the Agents promptly upon request for all out-of-pocket disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's, the Notes Collateral Agent's and the Agents' agents and counsel.

The Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee, the Notes Collateral Agent and the Agents and their respective officers, directors, employees, agents and any predecessor trustee and its officers, directors, employees and agents (the "**Indemnified Parties**") for, and hold the Indemnified Parties harmless against, any and all loss, damage, claims, liability or expense (including reasonable attorneys' fees and expenses) incurred by them in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the reasonable costs and expenses of enforcing this Indenture against any Issuer or any of the Guarantors (including this Section 7.06) or defending itself against any claim whether asserted by any Holder, any Issuer or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder) (but excluding taxes imposed on such Persons in connection with compensation for such administration or performance). The Trustee shall notify the Lead Issuer promptly of any claim of which a Responsible Officer has received written notice for which it may seek indemnity. Failure by the Trustee to so notify the Lead Issuer shall not relieve the Issuers or the Guarantors of their obligations hereunder. Except in cases where the interests of the Issuers and/or the Guarantors, on the one hand and the Indemnified Parties, on the other hand are, based on the advice of counsel, adverse, the Issuers shall defend the claim and the Indemnified Parties may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. Neither any Issuer nor any Guarantor need reimburse any expense or indemnify against any loss, liability or expense incurred by an Indemnified Party through such Indemnified Party's own willful misconduct or gross negligence (as determined by a court of competent jurisdiction in a final and non-appealable decision). Neither any Issuer nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld or delayed. Any settlement which affects an Indemnified Party may not be entered into without the consent of such Indemnified Party, unless the applicable Indemnified Party is given a full and unconditional release from liability with respect to the claims covered thereby, and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of such Indemnified Party.

The obligations of the Issuers and the Guarantors under this Section 7.06 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee or such Indemnified Party, as applicable.

To secure the payment obligations of the Issuers and the Guarantors in this Section 7.06, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except money or property held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.



When the Trustee is requested to act upon instructions of one or more Holders, the Trustee shall not be required to act in the absence of indemnity and/or security against the costs, expenses and liabilities that may be incurred in compliance with such a request.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(vi) or Section 6.01(a)(vii) hereof occurs, the expenses and the compensation for the services (including the reasonable fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

**Section 7.07. Replacement of Trustee.** A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Lead Issuer. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Lead Issuer in writing. The Lead Issuer may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.09 hereof;
- (b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Lead Issuer shall as promptly as practical appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Lead Issuer.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuers' expense), the Issuers or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Lead Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall deliver a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Issuers' obligations under Section 7.06 hereof shall continue for the benefit of the retiring Trustee.

**Section 7.08.** *Successor Trustee by Merger, etc.* If the Trustee or Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation,

the successor corporation without any further act shall be the successor Trustee or Agent. Any corporation into which the Trustee or any Agent for the time being may be merged or converted shall, on the date when such merger, conversion, consolidation, sale or transfer becomes effective and to the extent permitted by applicable law, be a successor Trustee or Agent under this Indenture without the execution or filing of any paper or any further act on the part of any of the parties to this Indenture. After the effective date all references in this Indenture to that Trustee or Agent shall be deemed to be references to that corporation.

**Section 7.09. Eligibility; Disqualification.** There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has, together with its parent, a combined capital and surplus of at least \$150,000,000 as set forth in its most recent published annual report of condition.

**Section 7.10. Security Documents; Intercreditor Agreements.** By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and the Notes Collateral Agent, as the case may be, to execute and deliver the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and any other Security Documents in which the Trustee or the Notes Collateral Agent, as applicable, is named as a party, including any Security Documents executed on or after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Notes Collateral Agent are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or any other Security Documents, the Trustee and the Notes Collateral Agent each shall have all of the rights, privileges, benefits, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

**Section 7.11. Limitation on Duty of Trustee in Respect of Collateral; Indemnification.**

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Notes Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee in good faith.

(b) The Trustee and Notes Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Trustee and Notes Collateral Agent, as determined by a court of competent jurisdiction by a final and non-appealable judgment, for the



validity or sufficiency of the Col- lateral or any agreement or assignment contained therein, for the validity of the title of the Issuers to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the

Collateral or otherwise as to the maintenance of the Collateral (except with respect to certificates delivered to the Notes Collateral Agent representing securities pledged under the Security Documents). The Trustee and Notes Collateral Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or the Security Documents by the Issuers, any Guarantor, the Bank Collateral Agent or the Junior Lien Representative.

### **Section 7.12.** *Resignation of Agents*

(a) Any Agent may resign its appointment hereunder at any time without the need to give any reason and without being responsible for any costs associated therewith by giving notice to the Lead Issuer and the Trustee 30 days' prior written notice (waivable by the Lead Issuer and the Trustee); *provided* that in the case of resignation of the Paying Agent no such resignation shall take effect until a new Paying Agent shall have been appointed by the Lead Issuer to exercise the powers and undertake the duties hereby conferred and imposed upon the Paying Agent. Following receipt of a notice of resignation from any Agent, the Lead Issuer shall promptly give notice thereof to the Holders in accordance with Section 13.01 hereof.

(b) If any Agent gives notice of its resignation in accordance with this Section 7.12 and a replacement Agent is required and by the tenth day before the expiration of such notice such replacement has not been duly appointed, such Agent may itself appoint as its replacement any reputable and experienced financial institution or may petition a court of competent jurisdiction to appoint a replacement, with properly incurred costs and expenses by the Agent in relation to such petition to be paid by the Issuers. Immediately following such appointment, the Lead Issuer shall give notice of such appointment to the Trustee, the remaining Agents and the Holders whereupon the Issuers, the Trustee, the remaining Agents and the replacement Agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Indenture.

(c) Upon its resignation becoming effective, the Paying Agent shall forthwith transfer all moneys held by it hereunder, if any, to the successor Paying Agent or, if none, the Trustee or to the Trustee's order, but shall have no other duties or responsibilities hereunder, and shall be entitled to the payment by the Issuers of its remuneration for the services previously rendered hereunder and to the reimbursement of all reasonable expenses (including legal fees) incurred in connection therewith.

(d) Notwithstanding replacement of an Agent pursuant to this Section 7.12, the Issuer's obligations under Section 7.06 hereof shall continue for the benefit of the retiring Agent.

### **Section 7.13.** *Agents' Rights.*

(a) The rights, powers, duties and obligations and actions of each Agent under this Indenture are several and not joint or joint and several.

(b) Money held by a Paying Agent need not be segregated, except as required by law, and in no event shall any Paying Agent be liable for interest on any money received by it hereunder.

(c) The Agents shall have no obligation to act or to take any action if they believe they will incur costs, expenses or liabilities for which they will not be reimbursed.

(d) The Issuers and the Agents acknowledge and agree that in the event of an Event of Default, the Trustee may, by notice in writing to the Lead Issuer and the Agents, require that the Agents act as agents of, and take instructions exclusively from, the Trustee. Until they have received such written

notice from the Trustee, the Agents shall act solely as agents of the Issuers and need have no concern for the interests of the Holders.

(e) The applicable Agents hold all funds as banker subject to the terms of this Indenture and as a result, such money will not be held in accordance with the rules established by the UK Financial Conduct Authority in the UK Financial Conduct Authority's Handbook of rules and guidance from time to time in relation to client money.

(f) The Agents shall act solely as agents of the Issuers and shall have no fiduciary or other obligation towards, or have any relationship of agency or trust, for or with any person other than the Issuers, except as expressly stated elsewhere in this Indenture.

(g) No Agent shall be required to make any payment of the principal, premium or interest payable pursuant to this Indenture unless and until it has received, and been able to identify or confirm receipt of, the full amount to be paid in accordance with the terms of this Indenture. To the extent that an Agent has made such payment with the prior written consent of the Issuers and for which it did not receive the full amount, the Issuers shall reimburse the Agent the full amount of any shortfall.

(h) The Issuers agree to pay any and all stamp and other documentary taxes or duties which may be payable in connection with the execution, delivery, performance and enforcement of this Indenture by the Paying Agent.

(i) The Agents may rely upon the terms of any notice, instruction, communication or other document believed by it to be genuine and be entitled to refrain from acting, without liability, if it determines that such instruction is unclear, equivocal or contradictory. In the event an Agent determines that an instruction received by it is unclear, equivocal or contradictory, the Agent shall as soon as reasonably practicable notify the instructing party of such determination.

(j) Notwithstanding anything else herein contained, each Agent may refrain without liability from doing anything that would or might in its opinion, based on the advice of counsel, be contrary to any law of any state or jurisdiction (including but not limited to the United States of America, Europe or, in each case, any jurisdiction forming a part of it and England and Wales) or any directive or regulation of any agency of any such state or jurisdiction or which would or might otherwise render it liable to any person or cause it to act in a manner which might prejudice its interests and may without liability do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

## ARTICLE 8 LEGAL DEFEASANCE AND COVENANT DEFEASANCE

**Section 8.01.** *Option to Effect Legal Defeasance or Covenant Defeasance.* The Lead Issuers may, with respect to the Notes, at its option and at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes and all obligations of the Guarantors with respect to the Guarantees upon compliance with the conditions set forth below in this Article 8.

**Section 8.02.** *Legal Defeasance and Discharge.* Upon the Issuers' exercise under Section

8.01 hereof of the option applicable to this Section 8.02 with respect to Notes, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations under this Indenture with respect to all outstanding Notes, the related Guarantees and the Security Documents and all Defaults and Events of Default cured on the date the conditions set forth below are satisfied (“**Legal Defeasance**”). For this purpose, Legal Defeasance means

that the Issuers and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the Notes, which shall thereafter be deemed to be “outstanding” only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below (it being understood that such Notes shall not be deemed outstanding for accounting purposes), and to have satisfied all their other obligations under such Notes, the Security Documents and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuers, shall execute instruments reasonably requested by the Lead Issuer acknowledging the same) and to have cured all then existing Defaults and Events of Default, except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of the Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;

(b) the Issuers’ obligations with respect to Notes concerning issuing temporary Notes, registration, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuers’ and the Guarantors’ obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Lead Issuer may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

**Section 8.03. Covenant Defeasance.** Upon the Lead Issuer’s exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, with respect to the Notes, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under Sections 3.08, 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.18 hereof, and clauses (ii) and (iii) of Section 5.01(a), and Section 5.01(f) hereof with respect to all outstanding Notes and the related Guarantees, on and after the date the conditions set forth in Section 8.04 hereof are satisfied (“**Covenant Defeasance**”), and such Notes shall thereafter be deemed not “outstanding” for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed “outstanding” for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to all outstanding Notes and the related Guarantees, the Issuers and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and the Guarantees of such Notes shall be unaffected thereby. In addition, upon the Lead Issuer’s exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Section 6.01(a)(iii) (solely with respect to the

covenants that are released upon a Covenant Defeasance), 6.01(a)(iv), 6.01(a)(v), 6.01(a)(vi) (solely with respect to Restricted Subsidiaries subject thereto), 6.01(a)(vii) (solely with respect to Restricted Subsidiaries subject thereto), 6.01(a)(viii), 6.01(a)(ix) and 6.01(a)(x) hereof shall not constitute Default or Events of Default.

**Section 8.04.** *Conditions to Legal or Covenant Defeasance.* The following shall be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(a) the Issuers shall irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Securities, or a combination thereof, in such amount as will be sufficient, in the opinion of an Independent Financial Advisor, without consideration of any reinvestment to pay the principal of, premium, if any, and interest due on such Notes on the stated maturity date or on the date of such redemption (including a Redemption Date, if applicable), as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuers must specify whether such Notes are being defeased to maturity or to a particular date of such redemption (including a Redemption Date, if applicable); *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium with respect to such Notes calculated as of the date of the notice of redemption, with any deficit as of the date of such redemption (including a Redemption Date, if applicable) (any such amount, the “**Applicable Premium Deficit**”) only required to be deposited with the Trustee on or prior to the Redemption Date. Any Applicable Premium Deficit shall be set forth in an Officer’s Certificate delivered to the Trustee simultaneously with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(b) in the case of Legal Defeasance, the Lead Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions:

(i) the Lead Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(ii) since the Issue Date, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Lead Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Event of Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting



of Liens in connection therewith or any other transactions necessary to effectuate any of the foregoing) shall have occurred and be continuing on the date of such de- posit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which an Issuer or any Guarantor is a party or by which an Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens in connection therewith or any other transactions necessary to effectuate any of the foregoing);

(f) the Lead Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuers or any Guarantor or others; and

(g) the Lead Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions), each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

**Section 8.05.** *Deposited Money, U.S. Government Securities to be Held in Trust; Other Miscellaneous Provisions.* Subject to Section 8.06 hereof, all money and U.S. Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including an Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers, jointly and severally, shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes and the related Guarantees.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuers from time to time upon the written request of the Lead Issuer any money or U.S. Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

**Section 8.06.** *Repayment to Issuers.* Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Lead Issuer on its request or (if then held by an Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuers for payment thereof, and

all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease.

**Section 8.07. Reinstatement.** If the Trustee or Paying Agent is unable to apply any United States dollars or U.S. Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' and the Guarantors' obligations under this Indenture and the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided* that if the Issuers make any payment of principal of, premium, if any, or interest on any Notes following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 9 AMENDMENT, SUPPLEMENT AND WAIVER

**Section 9.01. Without Consent of Holders.** Notwithstanding Section 9.02 hereof, the Issuers, any Guarantor (with respect to a Guarantee, this Indenture or the Security Documents to which it is a party), the Trustee and/or the Notes Collateral Agent (and any other Agents party thereto (to the extent applicable)), as the case may be, may amend or supplement this Indenture, the Notes, any Guarantee or the Security Documents without the consent of any Holder:

- (a) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (b) to provide for uncertificated Notes in addition to or in place of certificated Notes;
- (c) to comply with Section 5.01 hereof;
- (d) to provide for the assumption of Holdings' an Issuer's or any Guarantor's obligations to the Holders;
- (e) to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the legal rights under this Indenture of any such Holder;
- (f) to add or modify covenants for the benefit of the Holders or to surrender any right or power conferred upon Holdings, the Issuers or any Guarantor;
- (g) to provide for the issuance of Additional Notes in accordance with the terms of this Indenture;
- (h) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee, a successor Notes Collateral Agent or a successor Paying Agent hereunder pursuant to the requirements hereof;
- (i) to add an obligor or a Guarantor under this Indenture;
- (j) to conform the text of this Indenture, the Notes, any Guarantees or the Security Documents to any provision of the "Description of Secured Notes" section of the Offering Memorandum;

(k) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation to facilitate

the issuance and administration of the Notes; *provided, however*, that such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(l) to release any Guarantor from its Guarantee pursuant to this Indenture when permitted or required by this Indenture;

(m) to release and discharge any Lien securing the Notes when permitted or required by this Indenture (including pursuant to Section 4.12 hereof) or the Security Documents;

(n) to comply with the rules of any applicable securities depository;

(o) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the First Lien Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to this Indenture, any of the Security Documents or otherwise;

(p) to add Additional First Lien Secured Parties to any intercreditor agreement;

(q) to enter into any intercreditor agreement having substantially similar terms with respect to the Holders as those set forth in the First Lien Intercreditor Agreement, taken as a whole, or any joinder thereto;

(r) in the case of any Security Document, to include therein any legend required to be set forth therein pursuant to the First Lien Intercreditor Agreement or to modify any such legend as required by the First Lien Intercreditor Agreement;

(s) to provide for the succession of any parties to the Security Documents (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of the Senior Secured Credit Facilities or any other agreement that is not prohibited by this Indenture; and

(t) to qualify this Indenture under the Trust Indenture Act.

Upon the request of the Lead Issuer, and upon receipt by the Trustee and the Notes Collateral Agent of the documents described in Section 7.02 hereof (to the extent requested by the Trustee and/or the Notes Collateral Agent and subject to the last sentence of Section 9.05), the Trustee and/or the Notes Collateral Agent shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture, security documents or intercreditor agreements authorized or permitted by the terms of this Indenture and the Security Documents and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee and/or the Notes Collateral Agent shall have the right, but not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements that affect its own rights, duties or immunities under this Indenture, the Security Documents or otherwise. Notwithstanding the foregoing, no Opinion of Counsel or board resolution shall be required

in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto.

**Section 9.02.** *With Consent of Holders.* Except as provided in Section 9.01 and this Section 9.02, the Issuers, the Guarantors, the Trustee and the Notes Collateral Agent (or any other Agent a party hereto, to the extent applicable), may amend or supplement this Indenture, the Notes, the Guarantees and the Security Documents with the consent of the Holders of at least a majority in principal amount of all the Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes (which shall be considered waived only with respect to Notes held by consenting Holders), except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, any Guarantee, the Notes or the Security Documents may be waived with the consent of the Holders of a majority in principal amount of all the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes); Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be “outstanding” for the purposes of this Section 9.02.

Upon the written request of the Lead Issuer, and upon the filing with the Trustee and the Notes Collateral Agent, as applicable, of evidence satisfactory to the Trustee and/or the Notes Collateral Agent of the consent of the Holders as aforesaid, the Trustee and/or the Notes Collateral Agent shall join with the Issuers and the Guarantors in the execution of such amended or supplemental indenture, security documents or intercreditor agreements unless such amended or supplemental indenture, security documents or intercreditor agreements affect the Trustee’s and/or the Notes Collateral Agent’s, as applicable, own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee and/or the Notes Collateral Agent, as applicable, may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Lead Issuer shall send to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Lead Issuer to send such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 9.02 may not, with respect to any Notes held by a non-consenting Holder:

- (a) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to (i) notice periods (to the extent consistent with applicable requirements of clearing and settlement systems) for redemption and conditions to redemption and (ii) Section 3.08, Section 4.10 and Section 4.14 hereof);
- (c) reduce the rate of or change the time for payment of interest on any such Note;



(d) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on such Notes, except a rescission of acceleration of the Notes by the Holders of a

majority in principal amount of all the then outstanding Notes, and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture, the Notes or any Guarantee which cannot be amended or modified without the consent of all affected Holders;

- (e) make any such Note payable in money other than that stated therein;
- (f) make any change in the provisions of this Indenture relating to waivers of past Defaults;
- (g) make any change in these amendment and waiver provisions;
- (h) amend the contractual right expressly set forth in this Indenture or the Notes of any Holder to institute suit for the enforcement of any payment on or with respect to such Holder's Notes on or after the due dates therefor;
- (i) make any change to or modify the ranking of such Notes as to the contractual right of payment that would adversely affect the Holders; or
- (j) except as expressly permitted by this Indenture, modify the Guarantees of Holdings or any Subsidiary Guarantor that is a Significant Subsidiary, or any group of Subsidiary Guarantors that, taken together (as of the latest consolidated financial statements for a fiscal quarter end provided as required under Section 4.03 hereof), would constitute a Significant Subsidiary in any manner materially adverse to the Holders of such Notes.

Notwithstanding the foregoing, without the consent of the Holders of at least 66-2/3% in aggregate principal amount of the Notes then outstanding, no amendment or waiver may (A) make any change in any Security Document or the provisions in this Indenture dealing with Collateral or application of trust proceeds of the Collateral with the effect of releasing the Liens on all or substantially all of the Collateral which secure the Obligations in respect of the Notes or (B) change or alter the priority of the Liens securing the Obligations in respect of the Notes in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture, the Security Documents or the First Lien Intercreditor Agreement. For the avoidance of doubt, if such consents are obtained with respect to an action described in clause (A) and (B) above, such action shall be permitted under this Indenture.

**Section 9.03. *Revocation and Effect of Consents.*** Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Lead Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only

such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to

be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

**Section 9.04.** *Notation on or Exchange of Notes.* The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

**Section 9.05.** *Trustee to Sign Amendments, etc.* The Trustee and the Notes Collateral Agent shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Notes Collateral Agent, as applicable. Except as set forth in the last sentence of this Section 9.05, an Issuer may not sign an amendment, supplement or waiver until the Board of such Issuer approves it. In executing any amendment, supplement or waiver, the Trustee and the Notes Collateral Agent shall be provided with and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 13.03 hereof, an Officer's Certificate and an Opinion of Counsel each stating that the execution of such amended or supplemental indenture or security documents or intercreditor agreements is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof. Notwithstanding the foregoing, no Opinion of Counsel or resolution shall be required for the Trustee and the Notes Collateral Agent to execute any supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, adding a new Guarantor under this Indenture.

**Section 9.06.** *Additional Voting Terms; Calculation of Principal Amount.*

(a) All Notes issued under this Indenture shall vote and consent together on all matters (as to which any of such Notes may vote) as one class and no series of Notes will have the right to vote or consent as a separate series on any matter. Determinations as to whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, waiver or consent shall be made in accordance with this Article Nine and Section 9.06(b) hereof.

(b) With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (i) the principal amount, as of such date of determination, of Notes, the Holders of which have so consented by (b) the aggregate principal amount, as of such date of determination, of the Notes then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.08 and Section 2.09 of this Indenture. Any such calculation made pursuant to this Section 9.06(b) shall be made by the Lead Issuer and delivered to the Trustee pursuant to an Officer's Certificate.

**Section 9.07.** *No Impairment of Right of Holders to Receive Payment.* For the avoidance of doubt, no amendment to, or deletion of any of the covenants under Article 4 or action taken in compliance with the covenants in

effect at the time of such action, shall be deemed to impair or affect any legal rights of any Holders of the Notes to receive payment of principal of or premium, if any, or interest on the Notes or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes.

## ARTICLE 10 GUARANTEES

**Section 10.01.** *Guarantee.* Subject to this Article 10, from and after the Issue Date, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally, guarantees, on a senior secured basis, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations of the Issuers hereunder or thereunder, that: (a) the principal of and interest and premium, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other Obligations of the Issuers to the Holders or the Trustee hereunder or under the Notes shall be promptly paid in full, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection. All payments under each Guarantee will be made in U.S. dollars.

The Guarantors hereby agree that their obligations hereunder are equivalent to the obligations of a primary obligor and shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than payment in full of all of the Obligations of the Issuers hereunder or under the Notes). Each Guarantor hereby waives, to the fullest extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by full payment of the obligations contained in the Notes and this Indenture or by release in accordance with the provisions of this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

If any Holder or the Trustee is required by any court or otherwise to return to an Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either an Issuer or the Guarantors, any amount paid either to the Trustee or such Holder, then this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and

(y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as

the exercise of such right does not impair the rights of the Holders under the Guarantees. Each Guarantor that makes a payment under its Guarantee shall, to the fullest extent permitted by applicable law, be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion

of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Until terminated in accordance with Section 10.06, each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuers for liquidation or reorganization, should the Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment of the Notes is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Guarantor shall be a general senior secured obligation of such Guarantor and shall be *pari passu* in right of payment with all existing and future Senior Indebtedness of such Guarantor.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

**Section 10.02. *Limitation on Guarantor Liability.*** Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law or being void or voidable under any law relating to insolvency of debtors.

**Section 10.03. *Execution and Delivery.*** To evidence its Guarantee set forth in Section 10.01 hereof, subject to Section 10.07 hereof, each Guarantor hereby agrees that this Indenture (or a supplemental indenture in the form of Exhibit D hereto) shall be executed on behalf of such Guarantor by one of its authorized officers.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.



If an officer whose signature is on this Indenture (or a supplemental indenture in the form of Exhibit D hereto) no longer holds that office at the time the Trustee authenticates a Note, the Guarantee of such Guarantor shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Lead Issuer shall cause any Restricted Subsidiary to comply with the provisions of Section 4.15 hereof and this Article 10, to the extent applicable.

**Section 10.04. Subrogation.** Each Guarantor shall be subrogated to all rights of Holders against the Issuers in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 10.01 hereof; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuers under this Indenture or the Notes shall have been paid in full.

**Section 10.05. Benefits Acknowledged.** Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

**Section 10.06. Release of Guarantees.** Each Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and shall thereupon terminate and be of no further force and effect, and no further action by such Guarantor, the Issuers or the Trustee is required for the release of such Guarantor's Guarantee, upon:

(A) in the case of a Subsidiary Guarantor, any sale, exchange, issuance disposition or transfer (by merger, amalgamation, consolidation, dividend, distribution or otherwise) of (x) the Capital Stock of such Subsidiary Guarantor, after which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary or (y) all or substantially all the assets of such Subsidiary Guarantor, in each case if such sale, exchange, issuance, disposition or transfer is not prohibited by the applicable provisions of this Indenture (including any amendments thereof);

(B) the release or discharge of the guarantee by, or direct obligation of, such Guarantor of Indebtedness under the Senior Secured Credit Facilities, or the release or discharge of such other guarantee or direct obligation that resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee or direct obligation (it being understood that a release subject to a contingent reinstatement will constitute a release for the purposes of this provision, and that if any such Guarantee is so reinstated, such Guarantee shall also be reinstated to the extent that such Guarantor would then be required to provide a Guarantee pursuant to Section 4.15 hereof);

(C) in the case of a Subsidiary Guarantor, the designation of any Restricted Subsidiary that is a Subsidiary Guarantor as an Unrestricted Subsidiary in compliance with the applicable provisions of this Indenture or the occurrence of any event following which the Subsidiary Guarantor is no longer a Restricted Subsidiary in compliance with the applicable provisions of this Indenture;

(D) upon the merger, amalgamation or consolidation of any Guarantor with and into an Issuer or another Guarantor or upon the liquidation of such Guarantor, in each case, in compliance with the applicable provisions of this Indenture;

(E) in the case of a Subsidiary Guarantor, the occurrence of a Covenant Suspension Event;

(F) as provided under Article 9 or in accordance with the provisions of the First Lien Intercreditor Agreement;

(G) the exercise by the Issuers of their Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 hereof or the discharge of the Issuers' obligations under this Indenture in accordance with the terms of this Indenture; or

(H) in the case of Holdings, if Holdings ceases to be the direct parent of the Issuers, subject to the assumption of all of the obligations of Holdings under this Indenture and the applicable Security Documents, in each case, pursuant to supplemental indentures or other applicable documents or instruments by the entity that (i) owns directly 100% of the Equity Interests of the Lead Issuer and (ii) directly or indirectly owns 100% of the Equity Interests of CSLS.

Notwithstanding clause (i)(E) above, if, after any Covenant Suspension Event, a Reversion Date shall occur, then the Suspension Period with respect to such Covenant Suspension Event shall terminate and all actions reasonably necessary to provide that the Notes shall have been unconditionally guaranteed on a secured basis by each Guarantor (to the extent such guarantee is required by Section 4.15 hereof) shall be taken within 90 days after such Reversion Date or as soon as reasonably practicable thereafter.

**Section 10.07.** *Effectiveness of Guarantees.* This Indenture shall be effective upon its execution and delivery by the parties hereto. The provisions set forth in this Article 10 with respect to the Subsidiary Guarantors will only become operative concurrently with the consummation of the Acquisition.

## ARTICLE 11 SATISFACTION AND DISCHARGE

**Section 11.01.** *Satisfaction and Discharge.* This Indenture and related Guarantees shall be discharged and shall cease to be of further effect as to all Notes (other than certain rights of the Trustee and the Issuers' obligations with respect thereto, as provided below) when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and the Issuers have or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; *provided* that upon any redemption that requires the payment of the Applicable Premium

with respect to such Notes, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any Applicable Premium Deficit only required to be deposited with the Trustee on or prior to the date of such redemption (including a Redemption Date, if applicable). Any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee simultaneously with the deposit of such Applicable Premium

Deficit that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(ii) no Event of Default (other than that resulting from borrowing funds to be applied to make such deposit or any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to this Indenture with respect to the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which an Issuer or any Guarantor is a party or by which an Issuer or any Guarantor is bound (other than resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);

(iii) the Issuers have paid or caused to be paid all sums payable by them under this Indenture with respect to the Notes; and

(iv) the Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the date of such redemption (including a Redemption Date, if applicable), as the case may be.

In addition, the Lead Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied. Such Opinion of Counsel may rely on such Officer's Certificate as to matters of fact, including clauses (b)(i), (ii), (iii) and (iv) above.

Notwithstanding the satisfaction and discharge of this Indenture and the Notes, the provisions of Section 7.06 shall survive with respect to such Notes and if money shall have been deposited with the Trustee pursuant to clause (b)(i) of this Section 11.01, the provisions of Section 11.02 and Section 8.06 hereof shall survive such satisfaction and discharge.

**Section 11.02. *Application of Trust Money.*** Subject to the provisions of Section 8.06 hereof, all money, and U.S. Government Securities deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including an Issuer or a Guarantor acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money and, U.S. Government Securities have been deposited with the Trustee; but such money and, U.S. Government Securities and need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, each Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; *provided* that if any Issuer has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, such Issuer shall be subrogated to the rights

of the Holders to receive such payment from the money or U.S. Government Securities held by the Trustee or Paying Agent.

## ARTICLE 12 COLLATERAL

### **Section 12.01.** *Security Documents.*

The due and punctual payment of the principal of, premium and interest on the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium and interest on the Notes and performance of all other Obligations of the Issuers and the Guarantors to the Holders, the Trustee or the Notes Collateral Agent under this Indenture, the Notes, the Guarantees, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Security Documents, which define the terms of the Liens that secure First Lien Notes Obligations, subject to the terms of the First Lien Intercreditor Agreement. The Trustee, the Issuers and the Guarantors hereby acknowledge and agree that, subject to the terms of the First Lien Intercreditor Agreements and any other applicable intercreditor agreement and as further set forth below, the Notes Collateral Agent (or its bailee) holds the Collateral in trust for the benefit of the Holders, the Trustee and the Notes Collateral Agent and pursuant to the terms of the Security Documents and the First Lien Intercreditor Agreement. Each Holder, by accepting a Note, consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral) and the First Lien Intercreditor Agreement and Junior Lien Intercreditor Agreement, if any, each as may be in effect or may be amended from time to time in accordance with their terms and this Indenture, and authorizes and directs the Notes Collateral Agent and the Trustee to enter into or join, if applicable, the Security Documents and the First Lien Intercreditor Agreement on the Issue Date, and the Security Documents and the Junior Lien Intercreditor Agreement, if any, at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuers shall deliver to the Notes Collateral Agent copies of all documents required to be filed pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 12.01, to assure and confirm to the Notes Collateral Agent the security interest in the Collateral contemplated hereby, by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. On or following the Issue Date and subject to the First Lien Intercreditor Agreement, the Issuers and the Guarantors shall, at their own expense, execute, deliver, acknowledge, record and file or cause to be executed, delivered, acknowledged, recorded or filed any and all further documents, financing statements (including continuation statements and amendments to financing statements), agreements and instruments, and take all further action that may be required under applicable law in order to grant, preserve, maintain, protect and perfect (or continue the perfection of) the validity and priority of the Liens and security interests created or intended to be created by the Security Documents in the Collateral and cause the Collateral Requirement to be and remain satisfied; provided that for so long as there are outstanding any Senior Secured Credit Facility Obligations, no actions shall be required to be taken with respect to the perfection of the security interests in the Collateral to the extent such actions are not required to be taken with respect to the Senior Secured Credit Facilities. Such security interest and Liens will be created under the Security Documents and other security agreements, Mortgages and other instruments and documents.

The terms of the First Lien Intercreditor Agreement are hereby ratified and approved by the Trustee on its own behalf and on behalf of the Notes Secured Parties in all respects and the Trustee on its own behalf and on behalf of the Notes Secured Parties directs the Notes Collateral Agent to bind itself to the terms thereof on behalf of the Notes Secured Parties.



**Section 12.02.** *Release of Collateral.*

(a) Collateral may be released from the Lien and security interest created by the Security Documents at any time and from time to time in accordance with the provisions of the Security Documents, the First Lien Intercreditor Agreement and this Indenture. Notwithstanding anything to the contrary in the Security Documents, the First Lien Intercreditor Agreement and this Indenture, the Issuers and the Guarantors will be entitled to the release of property and other assets constituting Collateral from the Liens securing the Notes and the First Lien Notes Obligations under any one or more of the following circumstances:

(i) to enable an Issuer and/or one or more Guarantors to consummate the sale, transfer or other disposition (including by the termination of capital leases or the repossession of the leased property in a capital lease by the lessor) of such property or assets (to a Person that is not an Issuer or Guarantor) to the extent consummated in accordance with, or not prohibited by, Section 4.10 hereof;

(ii) in the case of a Guarantor that is released from its Guarantee with respect to the Notes pursuant to the terms of this Indenture, the release of the property and assets of such Guarantor;

(iii) upon the occurrence of an Investment Grade Event, solely to the extent that neither the Senior Secured Credit Facilities nor any other First Lien Obligations are secured by the Collateral following such release; or

(iv) as described under Article 9 hereof.

(b) The Liens on the Collateral securing the Notes and the Guarantees also will be released:

(i) upon payment in full of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations under this Indenture, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest, are paid;

(ii) upon a Legal Defeasance or Covenant Defeasance under this Indenture as described under Section 8.02 and Section 8.03 hereof, or a discharge of this Indenture as described under Article 11 hereof; or

(iii) pursuant to the Security Documents or the First Lien Intercreditor Agreement (including, for the avoidance of doubt, Section 3.04 thereof).

(c) Notwithstanding Section 12.02(a)(iii) hereof, if, after any Investment Grade Event, both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, the Lead Issuers and the Guarantors shall use commercially reasonable efforts to take all actions reasonably necessary to provide to the Notes Collateral Agent for its benefit and the benefit of the Trustee and the Holders of the Notes valid, perfected, first priority security interests (subject to Permitted Liens) in the Collateral within ninety (90) days after such date or as soon as reasonably practicable thereafter.

(d) With respect to any release of Collateral, upon receipt of an Officer's Certificate stating that all conditions precedent under this Indenture, the Security Documents and the First Lien Intercreditor Agreement, as applicable, to such release have been met and that it is permitted for the Trustee and/or Notes Collateral Agent to

execute and deliver the documents requested by the Lead Issuer in connection with such release and any necessary or proper instruments of termination, satisfaction or release prepared

by an Issuer, the Trustee and the Notes Collateral Agent shall, execute, deliver or acknowledge (at the Issuers' expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Security Documents or the First Lien Intercreditor Agreement and shall do or cause to be done (at the Issuers' expense) all acts reasonably requested of them to release such Lien as soon as is reasonably practicable. Neither the Trustee nor the Notes Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate, and notwithstanding any term hereof or in any Security Document or in the First Lien Intercreditor Agreement to the contrary, the Trustee and the Notes Collateral Agent shall not be under any obligation to release any such Lien and security interest, or execute and deliver any such instrument of release, satisfaction or termination, unless and until it receives such Officer's Certificate, upon which it shall be entitled to conclusively rely.

**Section 12.03.** *Suits to Protect the Collateral.*

Subject to the provisions of Article 7 and the Security Documents and the First Lien Intercreditor Agreement, the Trustee may or may direct the Notes Collateral Agent to take all actions it determines in order to:

- (a) enforce any of the terms of the Security Documents; and
- (b) collect and receive any and all amounts payable in respect of the Obligations hereunder.

Subject to the provisions of the Security Documents and the First Lien Intercreditor Agreement, the Trustee and the Notes Collateral Agent shall have power to institute and to maintain such suits and proceedings as the Trustee or the Notes Collateral Agent may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee or the Notes Collateral Agent may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 12.03 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Notes Collateral Agent.

**Section 12.04.** *Authorization of Receipt of Funds by the Trustee Under the Security Documents.*

Subject to the provisions of the First Lien Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

**Section 12.05.** *Purchaser Protected.*

In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Notes Collateral Agent or the Trustee to execute the applicable release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article 12 to be sold be under any obligation to ascertain or inquire into the authority of an Issuer or the applicable Guarantor to make any such sale or other transfer.

**Section 12.06.** *Powers Exercisable by Receiver or Trustee.*

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 12 upon an Issuer or a Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by

such receiver or trustee shall be deemed the equivalent of any similar instrument of such Issuer or such Guarantor or of any Officer or Officers thereof required by the provisions of this Article 12; and if the Trustee or the Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or the Notes Collateral Agent.

**Section 12.07.** *Notes Collateral Agent.*

(a) The Issuers and each of the Holders by acceptance of the Notes hereby designate and appoint the Notes Collateral Agent as its agent under this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, and the Issuers and each of the Holders by acceptance of the Notes hereby irrevocably authorize the Notes Collateral Agent to take such action on its behalf under the provisions of this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, and to exercise such powers and perform such duties as are expressly delegated to the Notes Collateral Agent by the terms of this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, and consents and agrees to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and each Security Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Notes Collateral Agent agrees to act as such on the express conditions contained in this Section 12.07. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provisions of this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents, and the exercise by the Notes Collateral Agent of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, the duties of the Notes Collateral Agent shall be ministerial and administrative in nature, and the Notes Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, to which the Notes Collateral Agent is a party, nor shall the Notes Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder or any Grantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, or otherwise exist against the Notes Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” in this Indenture with reference to the Notes Collateral 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Notes Collateral Agent may perform any of its duties under this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person’s Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a “**Related Person**”), and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Notes Collateral Agent shall not be responsible for the negligence or misconduct of any receiver, agent, employee, attorney-in-fact or Related Person that it selects as long as such selection was made in good faith and with due care.



(c) None of the Notes Collateral Agent or any of its respective Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and non-appealable judgment) or under or in connection with any Security Document, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, or the transactions contemplated thereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment), or (ii) be responsible in any manner to any of the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Issuer or any other Grantor or Affiliate of any Grantor, or any Officer or Related Person thereof, contained in this Indenture, the Security Documents, the First Lien Intercreditor Agreement, or the Junior Lien Intercreditor Agreement, if any, or in any certificate, report, statement or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, or for any failure of any Grantor or any other party to this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, to perform its obligations hereunder or thereunder. None of the Notes Collateral Agent or any of its respective Related Persons shall be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, or to inspect the properties, books, or records of any Grantor or any Grantor's Affiliates.

(d) The Notes Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or e-mail) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuers or any other Grantor), independent accountants and other experts and advisors selected by the Notes Collateral Agent. The Notes Collateral Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. The Notes Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Notes Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(e) The Notes Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Notes Collateral Agent shall have received written notice from the Trustee or the Lead Issuer referring to this Indenture, describing such Default or Event of Default and



stating that such notice is a “notice of default” and such notice references the Notes, the Indenture and the Issuers. The Notes Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with

Article 6 or the Holders of a majority in aggregate principal amount of the Notes (subject to this Section 12.07).

(f) The Notes Collateral Agent may resign at any time by 30 days' written notice to the Trustee and the Lead Issuer, such resignation to be effective upon the acceptance of a successor agent to its appointment as Notes Collateral Agent. If the Notes Collateral Agent resigns under this Indenture, the Lead Issuer shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of the Notes Collateral Agent (as stated in the notice of resignation), the Trustee, at the written direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may appoint a successor collateral agent, subject to the consent of the Lead Issuer (which consent shall not be unreasonably withheld and which shall not be required during a continuing Event of Default). If no successor collateral agent is appointed and consented to by the Lead Issuer pursuant to the preceding sentence within thirty (30) days after the intended effective date of resignation (as stated in the notice of resignation) the Notes Collateral Agent shall be entitled to petition a court of competent jurisdiction to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Notes Collateral Agent, and the term "Notes Collateral Agent" shall mean such successor collateral agent, and the retiring Notes Collateral Agent's appointment, powers and duties as the Notes Collateral Agent shall be terminated. After the retiring Notes Collateral Agent's resignation hereunder, the provisions of this Section 12.07 (and Section 7.06 hereof) shall continue to inure to its benefit and the retiring Notes Collateral Agent shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Notes Collateral Agent under this Indenture.

(g) The Trustee shall initially act as Notes Collateral Agent and shall be authorized to appoint co-Notes Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents or the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, neither the Notes Collateral Agent nor any of its respective officers, directors, employees or agents or other Related Persons shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Notes Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Notes Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment.

(h) The Trustee and the Notes Collateral Agent, as applicable, are authorized and directed to

(i) enter into the Security Documents to which it is party, whether executed on or after the Issue Date, (ii) enter into the First Lien Intercreditor Agreement on the Issue Date, (iii) enter into the Junior Lien Intercreditor Agreement, if any, after the Issue Date, (iv) make the representations of the Holders set forth in the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, (v) bind the Holders on the terms as set forth in the Security Documents, the First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement, if any, and (vi) perform and observe its obligations under the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any.

(i) If at any time or times the Trustee shall receive (i) by payment, foreclosure, set-off or otherwise, any proceeds of Collateral or any payments with respect to the Obligations arising under, or relating to, this Indenture,

except for any such proceeds or payments received by the Trustee from the Notes Collateral Agent pursuant to the terms of this Indenture, or (ii) payments from the Notes Collateral

Agent in excess of the amount required to be paid to the Trustee pursuant to Article 6, the Trustee shall promptly turn the same over to the Notes Collateral Agent, in kind, and with such endorsements as may be required to negotiate the same to the Notes Collateral Agent such proceeds to be applied by the Notes Collateral Agent pursuant to the terms of this Indenture, the Security Documents and the First Lien Inter- creditor Agreement.

(j) The Notes Collateral Agent is each Holder's agent for the purpose of perfecting the Hold- ers' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon writ- ten request from the Lead Issuer, the Trustee shall notify the Notes Collateral Agent thereof and promptly shall, subject to the terms of the First Lien Intercreditor Agreement, deliver such Collateral to the Notes Collateral Agent or otherwise deal with such Collateral in accordance with the Notes Collateral Agent's instructions.

(k) The Notes Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by any Grantor or is cared for, protected, or insured or has been encumbered, or that the Notes Collateral Agent's Liens have been properly or suffi- ciently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all or the Grantor's property constituting Collateral intended to be sub- ject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Notes Col- lateral Agent pursuant to this Indenture, any Security Document, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, other than pursuant to the instructions of the Holders of a majority in aggregate principal amount of the Notes or as otherwise provided in the Security Documents.

(l) If an Issuer or any Guarantor (i) incurs any obligations in respect of First Lien Obliga- tions or Junior Lien Obligations (in each case, secured by Liens with a priority that is not prohibited by this Indenture) at any time when no applicable intercreditor agreement is in effect or at any time when In- debtedness constituting First Lien Obligations or Junior Lien Obligations entitled to the benefit of an ex- isting First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement is concurrently retired, and (ii) delivers to the Notes Collateral Agent an Officer's Certificate so stating and requesting the Notes Collateral Agent to enter into an intercreditor agreement (on substantially the same terms as the applica- ble First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement) in favor of a designated agent or representative for the holders of the First Lien Obligations or Junior Lien Obligations so in- curred, together with an Opinion of Counsel, the Collateral Agent shall (and is hereby authorized and di- rected to) enter into such intercreditor agreement (at the sole expense and cost of the Issuers, including legal fees and expenses of the Notes Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder; *provided* that neither an Officer's Certificate nor an Opin- ion of Counsel shall be required in connection with the First Lien Intercreditor Agreement to be entered into by the Trustee and the Notes Collateral Agent on the Issue Date. For the avoidance of doubt, the Trustee shall enter into any agreements or instruments necessary to effectuate the foregoing actions, as set forth in the Officer's Certificate described above.

(m) No provision of this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or any Security Document shall require the Notes Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in

the case of the Notes Collateral Agent) unless it shall have received indemnity and/or security satisfactory to the Notes Collateral Agent

and the Trustee against potential costs and liabilities incurred by the Notes Collateral Agent relating thereto.

Notwithstanding anything to the contrary contained in this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or the Security Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Notes Collateral Agent has determined that the Notes Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Notes Collateral Agent shall at any time be entitled to cease taking any action described in this clause (m) if it no longer reasonably deems any indemnity, security and/or undertaking from the Issuers or the Holders to be sufficient.

(n) The Collateral Agent (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents or instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment, (ii) shall not be liable for interest on any money received by it except as the Notes Collateral Agent may agree in writing with the Issuers (and money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law) and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Notes Collateral Agent shall not be construed to impose duties to act.

(o) Neither the Notes Collateral Agent nor the Trustee shall be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Neither the Notes Collateral Agent nor the Trustee shall be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(p) The Notes Collateral Agent does not assume any responsibility for any failure or delay in performance or any breach by any Issuer or any other Grantor under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents. The Notes Collateral Agent shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in this Indenture, the Security Documents, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or in any certificate, report, statement, or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or any Security Document; the execution, validity, genuineness, effectiveness or enforceability of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and any Security Documents of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; the assets, liabilities,

financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Obligations

under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents. The Notes Collateral Agent shall have no obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents, or the satisfaction of any conditions precedent contained in this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and any Security Documents. The Notes Collateral Agent shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents unless expressly set forth hereunder or thereunder. The Notes Collateral Agent shall have the right at any time to seek instructions from the Holders with respect to the administration of this Indenture, the Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any.

(q) The parties hereto and the Holders hereby agree and acknowledge that neither the Notes Collateral Agent nor the Trustee shall assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, the Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents, the Notes Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Notes Collateral Agent in the Collateral and that any such actions taken by the Notes Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Notes Collateral Agent or the Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Notes Collateral Agent or the Trustee's sole discretion may cause the Notes Collateral Agent or the Trustee to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.

§9601, *et seq.*, or otherwise cause the Notes Collateral Agent or the Trustee to incur liability under CERCLA or any other federal, state or local law, the Notes Collateral Agent and the Trustee each reserves the right, instead of taking such action, to either resign as the Notes Collateral Agent or the Trustee or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Neither the Notes Collateral Agent nor the Trustee shall be liable to the Issuers, the Guarantors or any other Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Notes Collateral Agent or the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for property to be possessed, owned, operated or managed by any Person (including the Notes Collateral Agent or the Trustee) other than the Issuers or the Guarantors, Holders of a majority in aggregate principal amount of the then outstanding Notes shall direct the Notes Collateral Agent or the Trustee in writing to appoint an appropriately qualified Person (excluding the Notes Collateral Agent or the Trustee) who they shall designate to possess, own, operate or manage, as the case may be, the property.



(r) Upon the receipt by the Notes Collateral Agent of a written request of the Lead Issuer signed by an Officer (a “**Security Document Order**”), the Notes Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the

Trustee, any Security Document to which it is a party or amendment or supplement thereto to be executed after the Issue Date (including to provide for additional Indebtedness secured by Liens with a priority that is not prohibited by this Indenture); *provided* that the Notes Collateral Agent shall not be required to execute or enter into any such Security Document which, in the Notes Collateral Agent's reasonable opinion is reasonably likely to adversely affect the rights, duties, liabilities or immunities of the Notes Collateral Agent or that the Notes Collateral Agent determines is reasonably likely to involve the Notes Collateral Agent in personal liability. Such Security Document Order shall (i) state that it is being delivered to the Notes Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 12.07(r), and (ii) instruct the Notes Collateral Agent to execute and enter into such Security Document. Other than as set forth in this Indenture, any such execution of a Security Document shall be at the direction and expense of the Issuers, upon delivery to the Notes Collateral Agent of an Officer's Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Security Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Collateral Agent to execute such Security Documents (subject to the first sentence of this Section 12.07(r)). For the avoidance of doubt, the Trustee shall enter into any agreements or instruments necessary to effectuate the foregoing actions, as set forth in the Security Document Order.

(s) Subject to the provisions of the applicable Security Documents, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, if any, each Holder, by acceptance of the Notes, agrees that the Trustee and the Notes Collateral Agent shall execute and deliver the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and the Security Documents to which it is a party and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable.

(t) After the occurrence and continuance of an Event of Default, the Trustee, acting at the direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may, subject to the terms of the First Lien Intercreditor Agreement, direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture, the Security Documents or the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any.

(u) The Notes Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Security Documents or the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, and to the extent not prohibited under the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of Section 6.13 and the other provisions of this Indenture.

(v) In each case that the Notes Collateral Agent may or is required hereunder or under any Security Document, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, to take any action (an "**Action**"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Security Document or the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, the Notes Collateral Agent may seek

direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable

with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Notes Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then

outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(w) Notwithstanding anything to the contrary in this Indenture or in any Security Document or the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any, in no event shall the Notes Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture, the Security Documents, the First Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), nor shall the Notes Collateral Agent or the Trustee be responsible for, and neither the Notes Collateral Agent nor the Trustee makes any representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(x) Before the Notes Collateral Agent acts or refrains from acting in each case at the written request or direction of an Issuer or a Guarantor, other than as set forth in this Indenture, it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of this Section 12.07 and Section 13.03 hereof. The Notes Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(y) Notwithstanding anything to the contrary contained herein, the Notes Collateral Agent, subject to the First Lien Intercreditor Agreement, shall act pursuant to the instructions of the Holders and the Trustee solely with respect to the Security Documents and the Collateral.

(z) The rights, privileges, benefits, immunities, indemnities and other protections given to the Trustee are extended to, and shall be enforceable by, the Notes Collateral Agent as if the Notes Collateral Agent were named as the Trustee herein and the Security Documents were named as this Indenture herein.

(aa) Notwithstanding anything else to the contrary herein (but not with respect to express discretions to the Notes Collateral Agent hereunder), whenever reference is made in this Indenture, to any discretionary action whether by consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Notes Collateral Agent in its discretion or to any discretionary election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Notes Collateral Agent, it is understood that in all cases the Notes Collateral Agent shall be fully justified in failing or refusing to take any such discretionary action if it shall not have received written instruction, advice or concurrence of the Holders or any controlling agent or representative under any intercreditor agreement or Security Document in respect of such action (in each case as applicable). The Notes Collateral Agent shall have no liability for any failure or delay in taking any actions contemplated above as a result of a failure or delay on the part of the Holders or any controlling agent or representative under any intercreditor agreement or Security Document to provide such instruction, advice or concurrence.



ARTICLE 13 MISCELLANEOUS

**Section 13.01.** *Notices.* Any notice or communication by an Issuer, any Guarantor or the Trustee to the others is duly given if in writing in English and by publication on the website or online data system maintained in accordance with Section 4.03 or delivered in person or mailed by first-class mail (registered or certified, return receipt requested), electronic mail or other electronic transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuers and/or any Guarantor: Conduent

Incorporated

100 Campus Dr., Suite 200 Florham Park, New  
Jersey 07932

Attention: Robert Starr

Email: robert.starr@conduent.com Phone: (973)  
526-7155

and

Attention: Robert Dunphy

Email: robert.dunphy@conduent.com Phone: (973)  
261-7088

With a copy to (which shall not constitute notice for any purpose under this Indenture):

Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue  
of the Americas  
New York, New York 10019 Facsimile No.:  
(212) 492-0052 Attention: Lawrence G. Wee,  
Esq.

If to the Trustee, Paying Agent, Registrar and the Notes Collateral Agent:

U.S. Bank National Association  
CityPlace I, 185 Asylum Street, 27th Floor

Hartford, CT 06103

Email: alicia.pelletier@usbank.com

Attention: U.S. Bank Global Corporate Trust - Conduent Incorporated

The Issuers, any Guarantor, the Trustee or the Notes Collateral Agent, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt is acknowledged, if faxed or

sent electronically; the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; and on the date sent to the Depository if otherwise given in accordance with the procedures of the Depository; *provided* that any notice or communication delivered to the Trustee and/or the Notes Collateral Agent shall be deemed effective upon actual receipt thereof and on the first date on which publication is made, if given by publication (including by posting of information on the website or online data system maintained in accordance with Section 4.03).

Any notice or communication to a Holder shall be electronically delivered, mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the Note Register kept by the Registrar. Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or otherwise delivered in the manner provided above within the time prescribed, such notice or communication shall be deemed duly given, whether or not the addressee receives it.

If an Issuer sends a notice or communication to Holders, it shall send a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event or any other communication (including any notice of redemption or repurchase) to a holder of a Global Note or a holder of a beneficial interest in a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the applicable Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with accepted practices at the Depository.

Each of the Trustee and the Notes Collateral Agent agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee or the Notes Collateral Agent in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling.

Neither the Trustee nor the Notes Collateral Agent shall be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's or the Notes Collateral Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee or the Notes Collateral Agent, including, without limitation, the risk of the Trustee or the Notes Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.



Notwithstanding anything in this Indenture, the Security Documents or the Notes to the contrary, each of the Trustee, the Agents and the Notes Collateral Agent shall have the right to accept and act upon any notice, instruction, or other communication, including any funds transfer instruction, (each, a “**No- tice**”) received pursuant to this Indenture, the Security Documents and the Notes by electronic transmis- sion (including by e-mail, facsimile transmission, web portal or other electronic methods) and shall not have any duty to confirm that the person sending such Notice is, in fact, a person authorized to do so.

Electronic signatures believed by the Trustee, the Agents and the Notes Collateral Agent to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider identified by any other party hereto and acceptable to the Trustee, the Agents and the Notes Collateral Agent) shall be deemed original signatures for all purposes. The Issuers assume all risks arising out of the use of electronic signatures and electronic methods to send Notices to the Trustee, the Agents and the Notes Collateral Agent, including without limitation the risk of the Trustee, the Agents and the Notes Collateral Agent acting on an unauthorized Notice and the risk of interception or misuse by third parties. Notwithstanding the foregoing, each of the Trustee, the Agents and the Notes Collateral Agent may in any instance and in its sole discretion require that a Notice in the form of an original document bearing a manual signature be delivered to the Trustee, the Agents and the Notes Collateral Agent, as applicable, in lieu of, or in addition to, any such electronic Notice.

**Section 13.02.** *[Reserved].*

**Section 13.03.** *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by an Issuer or any of the Guarantors to the Trustee to take any action under this Indenture, such Issuer or such Guarantor, as the case may be, shall furnish to the Trustee or, if such action relates to a Security Document or an Intercreditor Agreement, the Notes Collateral Agent:

(a) an Officer's Certificate in form reasonably satisfactory to the Trustee or the Notes Collateral Agent, as applicable, (which shall include the statements set forth in Section 13.04 hereof) stating that, in the opinion of the signer, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee or the Notes Collateral Agent, as applicable, (which shall include the statements set forth in Section 13.04 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied; *provided* that no such Opinion of Counsel shall be delivered in connection with the issuance of the Initial Notes.

**Section 13.04.** *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof) shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

**Section 13.05. *Rules by Trustee and Agents.*** The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

**Section 13.06. *No Personal Liability of Directors, Officers, Employees and Stockholders.*** No past, present or future director, manager, officer, employee, incorporator, member, partner or direct or indirect equityholder of the Issuers or any Restricted Subsidiaries or of any of their direct or indirect parent companies (other than in such equityholder's capacity as an Issuer or a Guarantor) shall have any liability for any obligations of Holdings, the Issuers or the Guarantors under the Notes, the Guarantees, the Security Documents or this Indenture or any supplemental indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

**Section 13.07. *Governing Law.*** THIS INDENTURE, THE NOTES AND ANY GUARANTEE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE, THE NOTES OR ANY GUARANTEE, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**Section 13.08. *Waiver of Jury Trial.*** EACH OF HOLDINGS, THE ISSUERS, THE GUARANTORS, THE NOTES COLLATERAL AGENT AND THE TRUSTEE (1) AGREES TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE NOTES AND (2) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 13.09. *Force Majeure.*** In no event shall the Trustee or the Notes Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility.

**Section 13.10. *No Adverse Interpretation of Other Agreements.*** This Indenture may not be used to interpret any other indenture, loan or debt agreement of Holdings, the Lead Issuer or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**Section 13.11. *Successors.*** All agreements of each Issuer in this Indenture and the Notes shall bind its respective successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 5.02 or 10.06 hereof.

**Section 13.12. Severability.** In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 13.13. *Intercreditor Agreements.*** Reference is made to the First Lien Intercreditor Agreement and Junior Lien Intercreditor Agreement, if any. Each Holder, by its acceptance of a Note, (a) agrees that it will be bound by and will take no actions contrary to the provisions of the First Lien Intercreditor Agreement and Junior Lien Intercreditor Agreement, if any, and (b) authorizes and instructs the Trustee and the Notes Collateral Agent to enter into the First Lien Intercreditor Agreement and Junior Lien Intercreditor Agreement, if any, as Trustee and as Notes Collateral Agent, as the case may be, and on behalf of such Holder, including without limitation, making the representations of the Holders contained therein. The foregoing provisions are intended as an inducement to the lenders under the Senior Secured Credit Facilities to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the First Lien Intercreditor Agreement and Junior Lien Intercreditor Agreement, if any.

**Section 13.14. *Counterpart Originals.*** The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmissions shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

**Section 13.15. *Table of Contents, Headings, etc.*** The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 13.16. *Trust Indenture Act.*** The Issuers and the Guarantors shall not be required to qualify this Indenture under the Trust Indenture Act. The Trust Indenture Act shall not apply to this Indenture prior to any such qualification, and all references herein to compliance with the Trust Indenture Act refer to such compliance following any such qualification.

**Section 13.17. *USA Patriot Act.*** In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States (“**Applicable AML Law**”), the Trustee, Notes Collateral Agent and Agent are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Trustee, Notes Collateral Agent and Agent. Accordingly, each of the parties agree to provide to the Trustee, Notes Collateral Agent and Agent, upon their request from time to time such identifying information and documentation as may be available for such party in order to enable the Trustee, Notes Collateral Agent and Agent to comply with Applicable AML Law.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

CONDUENT BUSINESS SERVICES, LLC,  
as Lead Issuer

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

CONDUENT STATE & LOCAL SOLUTIONS, INC.,  
as an Issuer

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

CONDUENT INCORPORATED, as Holdings

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

*[Signature Page to Secured Indenture]*





CONDUENT BUSINESS PROCESS OPTIMIZATION SERVICES, INC. CONDUENT  
CARE AND QUALITY SOLUTIONS, INC.  
CONDUENT HEALTHCARE KNOWLEDGE SOLUTIONS, INC. CONDUENT  
HEALTHY COMMUNITIES CORPORATION CONDUENT IMAGE  
SOLUTIONS, INC.  
CONDUENT LEARNING SERVICES, INC. CONDUENT  
TRANSPORT SOLUTIONS, INC.  
CONDUENT WIRELESS DATA SERVICES NORTH AMERICAN, INC.  
CONDUENT EDI SOLUTIONS, INC.  
CONDUENT MIDDLE EAST, INC.  
CONDUENT MORTGAGE SERVICES, INC.  
CONDUENT PAYMENT INTEGRITY SOLUTIONS, INC.  
CONDUENT PUBLIC HEALTH SOLUTIONS, INC.  
CONDUENT TRADEONE MARKETING, INC.  
CONDUENT WORKERS COMPENSATION HOLDINGS, INC. CONDUENT  
CARE MANAGEMENT, LLC  
CONDUENT CARE SOLUTIONS, LLC  
CONDUENT CASUALTY CLAIMS SOLUTIONS, LLC  
CONDUENT EDUCATION SERVICES, LLC CONDUENT  
COMMERCIAL SOLUTIONS, LLC CONDUENT CREDIT  
BALANCE SOLUTIONS, LLC CONDUENT HEALTH  
ASSESSMENTS, LLC CONDUENT HERITAGE, LLC  
CONDUENT HR SERVICES, LLC  
CONDUENT PATIENT ACCESS SOLUTIONS, LLC CONDUENT LEGAL  
& COMPLIANCE SOLUTIONS, LLC CONDUENT HUMAN SERVICES,  
LLC  
CONDUENT STATE HEALTHCARE, LLC CONDUENT  
PARKINDY, LLC  
each, as Guarantor

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

CONDUENT FEDERAL SOLUTIONS, LLC CONDUENT  
LENDING, INC.  
CONDUENT HEALTH ADMINISTRATION, INC.,  
each. as Guarantor

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

*[Signature Page to Secured Indenture]*

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U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ ALICIA PELLETIER Name: Alicia Pelletier  
Title: Assistant Vice President

U.S. BANK NATIONAL ASSOCIATION, as Notes Collateral  
Agent

By: /s/ ALICIA PELLETIER Name: Alicia Pelletier  
Title: Assistant Vice President

*[Signature page to Secured Indenture]*

DEAL CUSIP: 20679MAD1  
REVOLVER CUSIP: 20679MAE9 TERM LOAN  
A CUSIP: 20679MAF6 TERM LOAN B CUSIP:  
20679MAG4

*Execution Version*

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CREDIT AGREEMENT

Dated as of October 15, 2021, among  
CONDUENT INCORPORATED, as Holdings,

CONDUENT BUSINESS SERVICES, LLC,  
as the Lead Borrower,

CONDUENT STATE & LOCAL SOLUTIONS, INC.,  
as CSLS Borrower,

AFFILIATED COMPUTER SERVICES INTERNATIONAL B.V.,  
as Dutch Borrower

THE GUARANTORS PARTY HERETO FROM TIME TO TIME, BANK OF  
AMERICA, N.A.,

as Administrative Agent, Collateral Agent, Swing Line Lender and an L/C Issuer,

THE LENDERS AND L/C ISSUERS PARTY HERETO FROM TIME TO TIME,

BOFA SECURITIES, INC., CITIBANK, N.A., CAPITAL ONE, NATIONAL ASSOCIATION, CITIZENS BANK, N.A.,  
FIFTH THIRD BANK, NATIONAL ASSOCIATION, HSBC SECURITIES (USA) INC., KEYBANC CAPITAL MARKETS  
INC., MIZUHO BANK, LTD., MUFG BANK, LTD., SANTANDER BANK, N.A., TRUIST SECURITIES, INC., U.S. BANK  
NATIONAL ASSOCIATION and WELLS FARGO SECURITIES, LLC,  
as Joint Lead Arrangers and Joint Bookrunners,

CAPITAL ONE, NATIONAL ASSOCIATION, CITIZENS BANK, N.A., FIFTH THIRD BANK, NATIONAL  
ASSOCIATION, HSBC SECURITIES (USA) INC., KEYBANC CAPITAL MARKETS INC., MIZUHO BANK, LTD., MUFG  
BANK, LTD., SANTANDER BANK, N.A., TRUIST SECURITIES, INC., U.S. BANK NATIONAL ASSOCIATION and  
WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Co-Documentation Agents and

CITIBANK, N.A.,  
as Syndication Agent

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- B Letter of Credit Issuance Request
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- E-1 Compliance Certificate
- E-2 Solvency Certificate
- F Assignment and Assumption
- G Security Agreement
- H Perfection Certificate
- I Intercompany Note
- J-1 Closing Date Intercreditor Agreement
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- K Administrative Questionnaire
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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”) is entered into as of October 15, 2021, among Conduent Business Services, LLC, a Delaware limited liability company (the “**Lead Borrower**”), Conduent State & Local Solutions, Inc., a New York corporation (“**CSLS Borrower**” and together with the Lead Borrower, the “**U.S. Borrowers**”), Affiliated Computer Services International B.V., a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*) organized under the laws of the Netherlands (the “**Dutch Borrower**” and together with the U.S. Borrowers, the “**Borrowers**”), Conduent Incorporated, a New York corporation (“**Holdings**”), the other Guarantors (such term and any other capitalized terms used but not defined in this introductory paragraph and the Preliminary Statements below are defined in Section 1.01 below) party hereto from time to time, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swing Line Lender and an L/C Issuer, and each of the entities from time to time party hereto as lenders (collectively, the “**Lenders**” and individually, a “**Lender**”).

### PRELIMINARY STATEMENTS

The Borrowers have requested that the applicable Lenders extend credit to the Borrowers in the form of (i) the Initial Term A Loans on the Closing Date in an initial aggregate principal amount of \$265,000,000, (ii) the Initial Term B Loans on the Closing Date in an initial aggregate principal amount of \$515,000,000 and (iii) the Revolving Credit Facility in an initial aggregate principal amount of \$550,000,000.

The proceeds of the Initial Term Loans, together with the proceeds of the Senior Secured Notes, will be used by the Borrowers to directly or indirectly consummate the Transactions, to pay the costs and expenses related to the Transactions and to fund cash to the Lead Borrower’s balance sheet.

The proceeds of the Revolving Credit Facility will also be used by the Borrowers and the Restricted Subsidiaries to replace, backstop or cash collateralize existing Letters of Credit and general corporate purposes (including permitted acquisitions, Capital Expenditures and Transaction Expenses) subject to the terms set forth herein.

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

### ARTICLE 1

#### DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement (including in the Preliminary Statements hereto), the following terms shall have the meanings set forth below:

“**Acceptable Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(2). “**Acceptable**

**Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of a Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit L-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Accounting Change**” means any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.



“**Additional Lender**” has the meaning set forth in Section 2.14(c).

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“**Additional Refinancing Lender**” has the meaning set forth in Section 2.15(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 the Administrative Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrowers and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in the form of Exhibit K or such other form as may be supplied from time to time by the Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**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. “**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.

“**Affiliated Lender**” means, at any time, any Lender that is a direct or indirect holding company of Holdings or an Investor (including portfolio companies of the Investors notwithstanding the exclusion in the definition of “Investors”) (other than the Lead Borrower or any of its Subsidiaries and other than any Debt Fund Affiliate or natural persons, but including “Permitted Holders”) or a Non-Debt Fund Affiliate of an Investor at such time.

“**Affiliated Lender Assignment and Assumption**” has the meaning set forth in Section 10.07(l)(i). “**Affiliated Lender Cap**” has the meaning set forth in Section 10.07(l)(iii).

“**Affiliated Lender Notice**” means the notice substantially in the form of Exhibit L-2.

“**Agent Fee Letter**” means that certain agent fee letter, dated the Closing Date, among the Borrowers and the Administrative Agent, as the same may be amended, supplemented or otherwise modified from time to time.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, and the officers, directors, employees, partners, agents, advisors, attorneys-in-fact and other representatives of such Persons and Affiliates.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Agents (if any).

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof incurred or payable by the applicable borrower generally to all Lenders of such Indebtedness in an amount equal to the sum of (a) the applicable margin;

(b) OID and upfront fees; *provided* that (i) OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity on a straight line basis (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); and (ii) “All-In Yield” shall not include amendment fees, arrangement fees, structuring fees, commitment fees, underwriting fees and any similar fees payable to any lead arranger (or its affiliates) in connection with the commitment or syndication of such Indebtedness, consent fees paid to consenting Lenders,

ticking fees on undrawn commitments and any other fees not paid or payable generally to all Lenders in the primary syndication of such Indebtedness and (c) the interest rate (excluding the applicable margin) after giving effect to any Eurocurrency Rate or Base Rate floor; *provided*, that if any Incremental Term Loans (or any other applicable Indebtedness) include a Eurocurrency Rate or Base Rate floor that is greater than the Eurocurrency Rate or Base Rate floor applicable to any existing Class of Term Loans, such differential between interest rate floors shall be included in the calculation of All-In Yield, but only to the extent an increase in the Eurocurrency Rate or Base Rate floor applicable to the existing Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case the Eurocurrency Rate and Base Rate floors (but not the Applicable Rate, unless the Lead Borrower otherwise elects in its sole discretion) applicable to the existing Term Loans shall be increased to the extent of such differential between interest rate floors.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any fiscal year, (a) 50.0% if the Consolidated First Lien Net Leverage Ratio as of the last day of such fiscal year is greater than 1.55 to 1.00, (b) 25.0% if the Consolidated First Lien Net Leverage Ratio as of the last day of such fiscal year is equal to or less than 1.55 to 1.00 and greater than 1.05 to 1.00 and (c) 0.0% if the Consolidated First Lien Net Leverage Ratio as of the last day of such fiscal year is equal to or less than 1.05 to 1.00, in each case, calculated on a Pro Forma Basis.

“**Applicable Period**” has the meaning set forth in Section 10.21. “**Applicable**

**Proceeds**” has the meaning set forth in Section 2.05(b)(ii). “**Applicable Rate**”

means:

(a) with respect to the Initial Term B Loans: a percentage per annum equal to (x) for Eurocurrency Rate Loans, 4.25% and (y) for Base Rate Loans, 3.25%; and

(b) with respect to the Initial Term A Loans and Revolving Credit Loans, as applicable:

(i) until delivery of financial statements for the fiscal quarter ending March 31, 2022 pursuant to Section 6.01, a percentage per annum equal to: (A) for Eurocurrency Rate Loans and Letter of Credit fees, 2.25% and (B) for Base Rate Loans, 1.25%; and

(ii) at any time upon or after the delivery of the of financial statements pursuant to Section 6.01 for the fiscal quarter ending March 31, 2022, the Applicable Rate and commitment fees shall be the following percentages per annum, based upon the Consolidated First Lien Net Leverage Ratio as set forth in

the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate					
Eurocurrency					
Level	Consolidated First Lien Net Leverage Ratio	Rate for Initial Term A Loans, Revolving Credit Loans and Letter of Credit Fees	Base Rate for Initial Term A Loans and Revolving Credit Loans	Fee	Commitment
1	≥ 3.00x	2.75%	1.75%		0.50%
2	<3.00x and ≥ 2.25	2.50%	1.50%		0.45%
3	<2.25x and ≥ 1.50x	2.25%	1.25%		0.40%
4	<1.50x and ≥ 0.75x	2.00%	1.00%		0.35%
5	< 0.75x	1.75%	0.75%		0.30%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance

Certificate is delivered pursuant to Section 6.02(a); *provided* that at the option of the Administrative Agent or the Required Lenders, the highest pricing level (e.g., Pricing Level 1) shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply) and (y) as of the first Business Day after an Event of Default under Section 8.01(a) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

In the event that any financial statements previously delivered pursuant to Section 6.01(a) or 6.01(b) were incorrect or inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Rate for any period (an “**Applicable Period**”) than the Applicable Rate applied for such Applicable Period, then (i) the Lead Borrower shall as soon as practicable deliver to the Administrative Agent the correct financial statements for such Applicable Period, (ii) the Applicable Rate shall be determined as if the Level for such higher Applicable Rate were applicable for such Applicable Period, and (iii) the Lead Borrower shall within three Business Days of demand thereof by the Administrative Agent pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Rate for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement. This paragraph shall not limit the rights of the Administrative Agent and the Lenders with respect to any Event of Default.

“**Applicable Time**” means, with respect to any Borrowings and payments in any Approved Foreign Currency, the local time in the place of settlement for such Approved Foreign Currency as shall be reasonably determined by the Administrative Agent or the applicable 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. In advance of the initial borrowing of a Revolving Credit Loan or issuance of a Letter of Credit, in each case, in any Approved Foreign Currency, the Administrative Agent or the applicable L/C Issuer, as applicable, shall provide the Borrowers and Revolving Credit Lenders with written notice of the Applicable Time for any borrowings and payments in such Approved Foreign Currency. In the event no such notice is delivered by the Administrative Agent, any Borrower and any Revolving Credit Lender shall be required to make any borrowings and payments in accordance with the times specified herein for borrowings and payments in Dollars.

“**Appropriate Lender**” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant L/C Issuer (if applicable) and (ii) the Revolving Credit Lenders and (c) with respect to the Swing Line Facility, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“**Approved Counterparty**” means (i) any Agent, Lender or any Affiliate of an Agent or Lender (a) at the time it entered into a Swap Contract or provided services under Treasury Services Obligations, as applicable, in its capacity as a party thereto, (b) with respect to a Swap Contract or Treasury Services Obligations in effect as of the Closing Date, as of the Closing Date, as applicable, in its capacity as a party thereto, and in the case of (a) or (b) notwithstanding whether such Approved Counterparty may cease to be an Agent, Lender or an Affiliate of an Agent or Lender thereafter, as applicable, (ii) any Person listed on Schedule 1.01E hereto and (iii) any other Person from time to time approved in writing by the Administrative Agent (not to be unreasonably withheld, delayed or conditioned).

“**Approved Currency**” means each of (i) Dollars, (ii) euros, (iii) Canadian Dollars and (iv) any other currency that is approved in accordance with Section 1.09.

“**Approved Foreign Currency**” means any Approved Currency other than Dollars.

“**Approved Fund**” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“Assignees” has the meaning set forth in Section 10.07(b).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit F hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means and includes the reasonable and documented out-of-pocket fees, disbursements and other charges of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, on any date, in respect of any Financing 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.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Lead Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Lead Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Lead Borrower nor any of its Affiliates may act as the Auction Agent.

“**Audited Financial Statements**” means the audited consolidated financial statements of Holdings and its Consolidated Subsidiaries as of December 31, 2020 and the related consolidated statements of income, stockholders’ equity and cash flows for the fiscal year ended on December 31, 2020.

“**Auto-Extension Letter of Credit**” has the meaning set forth in Section 2.03(b)(iii). “**Available**

**Incremental Amount**” has the meaning set forth in Section 2.14(d)(v).

“**Available RP Capacity Amount**” means (i) the amount of Restricted Payments that may be made at the time of determination pursuant to Sections 7.06(g), (h) and (l) *minus* (ii) the sum of the amount of the Available RP Capacity Amount utilized by the Lead Borrower or any Restricted Subsidiary to (A) make Restricted Payments in reliance on Sections 7.06 (g), (h) or (l), (B) make Investments pursuant to Section 7.02(n), and (E) make prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity utilizing the Available RP Capacity Amount pursuant to Section 7.10.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

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

“**Bail-In Legislation**” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail- In Legislation Schedule and



(b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bank of America**” means Bank of America, N.A. and its successors.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective 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 for deposits in dollars plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. Notwithstanding the foregoing, (a) with respect to the Revolving Credit Commitments and Initial Term A Loans, the Base Rate will be deemed to be 1.00% if the Base Rate calculated pursuant to the foregoing provisions would otherwise be less than 1.00% and (b) solely with respect to the Initial Term B Loans, the Base Rate will be deemed to be 1.50% if the Base Rate calculated pursuant to the foregoing provisions would otherwise be less than 1.50%.

“**Base Rate Loan**” means a Loan denominated in Dollars that bears interest based on the Base Rate. “**Benchmark**” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means:

(1) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months’ duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points) (in the case of monthly payment periods or 0.26161% (26.161 basis points) (in the case of quarterly payment periods);

*provided* that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrowers and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

(2) For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrowers as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

*provided* that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than (i) in the case of the Revolving Credit Commitments and Initial Term A Loans, 0.00%, the Benchmark Replacement will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents and (ii) in the case of the Term B Loans,

0.50%, the Benchmark Replacement will be deemed to be 0.50% for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement 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 Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Benchmark Transition Event”** means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then- current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.

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

**“Bilateral Letter of Credit Facility”** means any letter of credit facility of the Lead Borrower or any Restricted Subsidiary entered into with (i) a Lender, (ii) an Affiliate of a Lender or (iii) any other financial institution designated by the Lead Borrower (so long as such financial institution is reasonably acceptable to the Administrative Agent and so long as it enters into a separate agreement with the Administrative Agent the substance of which is reasonably satisfactory to the Administrative Agent), in each case, other than pursuant to this Agreement and including, without limitation, any letter of credit facility of the Lead Borrower or any Restricted Subsidiary existing on the Closing Date that was entered into prior to the Closing Date with a Person that is a Lender or an Affiliate of a Lender on the Closing Date.

**“Bilateral Letter of Credit Facility Bank”** means any holder of obligations owed pursuant to a Bilateral Letter of Credit Facility.

“**Bona Fide Debt Fund**” means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit in the ordinary course.

“**Borrowers**” has the meaning set forth in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning set forth in Section 6.02.

“**Borrower Offer of Specified Discount Prepayment**” means the offer by any Company Party to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“**Borrower Solicitation of Discount Range Prepayment Offers**” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Term Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“**Borrower Solicitation of Discounted Prepayment Offers**” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“**Borrowers**” has the meaning set forth in the introductory paragraph hereto.

“**Borrowing**” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Borrowing of a particular Class, as the context may require.

“**Business Day**” means (a) 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 of New York or the state where the Administrative Agent’s Office is located, (b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan (other than any Eurocurrency Rate Loan denominated in euros), any fundings, disbursements, settlements and payments in respect of any such Eurocurrency Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a day on which dealings in deposits in the applicable Approved Currency are conducted by and between banks in the applicable London interbank market, and (c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in euros, any fundings, disbursements, settlements and payments in euros in respect of any such Eurocurrency Rate Loan, or any other dealings in euros to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day described in clause (a) above that is also a TARGET Day.

“**Business Expansion**” mean (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by Holdings, the Lead Borrower or the Restricted Subsidiaries and (b) each creation or expansion into new markets (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“**Canadian Dollars**” and “**C\$**” mean lawful money of Canada.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Financing Leases) by the Lead Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Lead Borrower and the Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means (i) any Subsidiary of the Lead Borrower operating for the purpose of (a) insuring the businesses, operations or properties owned or operated by the Lead Borrower or any of its Subsidiaries, including their future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, and related benefits and/or (b) conducting any activities or business incidental thereto (it being understood and agreed that activities which are relevant or appropriate to qualify as an insurance company for U.S. federal or state tax purposes shall be considered “activities or business incidental thereto”) or (ii) any Subsidiary of any such insurance subsidiary operating for the same purpose described in clause (i) above.

“Cash Collateral” has the meaning set forth in Section 2.03(g).

“**Cash Collateral Account**” means a blocked account at a commercial bank specified by the Administrative Agent in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Collateralize**” has the meaning set forth in Section 2.03(g).

“**Cash Equivalents**” means any of the following types of Investments, to the extent owned by the Lead Borrower or any Restricted Subsidiary:

- (1) Dollars;
- (2) (a) cash in such other currencies held by the Lead Borrower or any Restricted Subsidiary from time to time in the ordinary course of business or consistent with industry practice, (b) Canadian Dollars or (c) euros, pounds sterling, yen or any national currency of any participating member state of the Economic and Monetary Union (EMU);
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (4) certificates of deposit, time deposits and eurodollar time deposits with maturities of 24 months or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding 24 months and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$100,000,000 (or the foreign currency equivalent as of the date of determination);
- (5) repurchase obligations for underlying securities of the types described in clauses (3), (4),  
(7) and entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;
- (6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody’s, at least A-2 by S&P or F2 by Fitch (or, if at any time Moody’s, S&P or Fitch shall not be rating such obligations, an equivalent rating from another nationally recognized statistical Rating Agency) and in each case maturing within 24 months after the date of creation thereof;
- (7) marketable short-term money market and similar funds having a rating of at least P-2, A-2 or F2 from Moody’s, S&P or Fitch respectively (or, if at any time Moody’s, S&P or Fitch shall not be rating such obligations, an equivalent rating from another nationally recognized statistical Rating Agency);
- (8) readily marketable direct obligations issued by, or unconditionally guaranteed by, any state, commonwealth or territory of the United States or any political subdivision, public instrumentality or taxing authority thereof with maturities of 24 months or less from the date of acquisition;



(9) readily marketable direct obligations issued by, or unconditionally guaranteed by, any foreign government or any political subdivision, public instrumentality or taxing authority thereof, in each case (other than in the case of such obligations issued or guaranteed by any participating member state of the Economic and Monetary Union (EMU)) having an investment grade rating from Moody's, S&P or Fitch (or, if at any time Moody's, S&P or Fitch shall not be rating such obligations be rating such obligations, an equivalent rating from another nationally recognized statistical Rating Agency) with maturities of 24 months or less from the date of acquisition;

(10) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated A (or the equivalent thereof) or better by S&P, A2 (or the equivalent thereof) or better by Moody's or A (or the equivalent thereof) or better by Fitch (or, if at any time Moody's, S&P or

Fitch shall not be rating such obligations, an equivalent rating from another nationally recognized statistical Rating Agency);

(11) securities with maturities of 24 months or less from the date of acquisition backed by standby letters of credit issued by any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(12) Indebtedness or preferred stock issued by Persons with a rating of “A” or higher from S&P, “A2” or higher from Moody’s or “A” or higher from Fitch with maturities of 24 months or less from the date of acquisition; and

(13) investment funds investing at least 90% of their assets in currencies, instruments or securities of the types described in clauses (1) through (12) above.

In the case of Investments by the Lead Borrower or any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (a) investments of the type and maturity described in clauses (1) through (8) and clauses (10), (11), (12) and (13) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (b) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

In addition, in the case of Investments by any Captive Insurance Subsidiary, Cash Equivalents shall also include (a) such Investments with average maturities of 12 months or less from the date of acquisition in issuers rated BBB- (or the equivalent thereof) or better by S&P, Baa3 (or the equivalent thereof) or better by Moody’s or the equivalent ratings by Fitch, in each case at the time of such Investment and (b) any Investment with a maturity of more than 12 months that would otherwise constitute Cash Equivalents of the kind described in any of clauses (1) through (13) of this definition or clause (a) above, if the maturity of such Investment was 12 months or less; *provided* that the effective maturity of such Investment does not exceed 15 years.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above; *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

For the avoidance of doubt, any items identified as Cash Equivalents under this definition will be deemed to be Cash Equivalents for all purposes regardless of the treatment of such items under GAAP.

“**Casualty Event**” means any event that gives rise to the receipt by the Lead Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property to replace or repair such equipment, fixed assets or Real Property.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as subsequently amended, and the regulations promulgated thereunder.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code. “**Change of Control**” shall be deemed to occur if:

(a) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than (i) any combination of the Investors and/or the Permitted Holders or (ii) any “group” including any Permitted Holders (*provided* that Permitted Holders beneficially own more than 50% of all voting interests beneficially owned by such “group”), shall have acquired beneficial ownership of more than 50%, on a fully diluted basis, of the voting interest in Holdings’ Equity

Interests, in each case, other than in connection with any transaction or series of transactions in which Holdings shall become the wholly owned Subsidiary of a Holding Company or for which the sole purpose is to collapse a holding company structure;

(b) a “**change of control**” (or similar event) shall occur under the Senior Secured Notes or any Indebtedness for borrowed money permitted under Section 7.03 with an outstanding principal amount in excess of the Threshold Amount or any Permitted Refinancing in respect of any of the foregoing with an outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to (i) own directly 100% of the Equity Interests of the Lead Borrower or (ii) directly or indirectly own 100% of the Equity Interests of the CSLS Borrower or the Dutch Borrower.

Notwithstanding the preceding or any provision of Section 13d-3 or 13d-5 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Equity Interests subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement, (ii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Equity Interests of any Borrower owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred, (iii) a Person or group will not be deemed to beneficially own the Equity Interests of another Person as a result of its ownership of the Equity Interests or other securities of such other Person’s parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Equity Interests entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iv) a transfer of assets between or among the Lead Borrower and its Restricted Subsidiaries shall not itself constitute a Change of Control.

“**Class**” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, Extended Revolving Credit Commitments of a given Extension Series, Extended Term Loans of a given Extension Series, Revolving Commitment Increases, Other Revolving Credit Commitments, Initial Term A Commitments, Initial Term B Commitments, Incremental Term Commitments or Refinancing Term Commitments of a given Refinancing Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans, Revolving Credit Loans under Revolving Commitment Increases, Revolving Credit Loans under Extended Revolving Credit Commitments of a given Extension Series, Revolving Credit Loans under Other Revolving Credit Commitments, Initial Term A Loans, Initial Term B Loans, Incremental Term Loans, Refinancing Term Loans of a given Refinancing Series or Extended Term Loans of a given Extension Series. Revolving Credit Commitments, Incremental Revolving Credit Commitments, Extended Revolving Credit Commitments, Other Revolving Credit Commitments, Initial Term A Commitments, Initial Term B Commitments, Incremental Term Commitments or Refinancing Term Commitments (and in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have the same terms and conditions shall be construed to be in the same Class. There shall be no more than an aggregate of four Classes of revolving credit facilities and eight Classes of term loan facilities under this Agreement at any time outstanding under this Agreement.

“**Closing Date**” means October 15, 2021, the first date on which all conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“**Closing Date Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the Closing Date and substantially in the form of Exhibit J hereto, among Holdings, the Borrowers, the Subsidiaries of the Lead Borrower from time to time party thereto, the Collateral Agent and U.S. Bank National Association in its capacity as Initial Additional First Lien Collateral Agent (as defined therein) for the Senior Secured Notes (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“**Closing Date Refinancing**” shall mean the repayment in full of, and the termination of all obligations and commitments under the Existing Credit Agreement (other than in respect of letters of credit that are Existing Letters of Credit or are back-stopped by letter(s) of credit issued hereunder or cash collateralized by the Borrowers or contingent indemnification, expense reimbursement claims or other contingent obligations not then due and payable) and, in each case, the release of any liens granted to secure such obligations and commitments.

“**Closing Fees**” means those fees required to be paid on the Closing Date pursuant to the Fee Letter. “**Code**”

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

“**Collateral**” means (i) the “Collateral” as defined in the Security Agreement, (ii) all the “Collateral” or “Pledged Assets” (or similar term) as defined in any other Collateral Document, (iii) Mortgaged Property and (iv) any other assets pledged or in which a Lien is granted, in each case, pursuant to any Collateral Document.

“**Collateral Agent**” means Bank of America, in its capacity as collateral agent or pledgee in its own name under any of the Loan Documents, or any successor collateral agent.

“**Collateral and Guarantee Requirement**” means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered on the Closing Date pursuant to Section 4.01(a) or from time to time pursuant to Section 6.11, Section 6.13, Section 6.16 or the Security Agreement, subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party thereto;

(b) the Obligations shall have been guaranteed by Holdings, each Borrower (other than the Dutch Borrower) and each Subsidiary of the Lead Borrower (other than the Excluded Subsidiaries) pursuant to the Guaranty;

(c) subject to the Closing Date Intercreditor Agreement, the Obligations and the Guaranty shall have been secured pursuant to the Security Agreement and the Holdings Pledge Agreement, as applicable, by a first-priority perfected security interest in (i) all the Equity Interests of the Lead Borrower and (ii) all Equity Interests of each Restricted Subsidiary (that is not an Excluded Subsidiary (other than any Restricted Subsidiary that is an Excluded Subsidiary solely pursuant to clause (f), (g) or (j)(y) of the definition thereof)) directly owned by any Loan Party, subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents (to the extent appropriate in the applicable jurisdiction) (and the Collateral Agent shall have received certificates, documents or title or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);

(d) all Pledged Debt owing to the Lead Borrower or any other Subsidiary Guarantor (any such Pledged Debt owing to the Lead Borrower or any Subsidiary Guarantor from any Restricted Subsidiary, the “**Pledged Intercompany Debt**”), that is evidenced by a promissory note shall have been delivered to the Collateral Agent pursuant to the Security Agreement and the Collateral Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(e) the Obligations and the Guaranty shall have been secured by a perfected security interest in substantially all now owned or at any time hereafter acquired tangible and intangible assets of the Lead Borrower and Subsidiary Guarantor (including Equity Interests, intercompany debt, accounts, inventory, equipment, investment property, contract rights, IP Rights, other general intangibles, Material Real Property (which in the case of Material Real Property shall include Mortgages on such Material Real Property) and proceeds of the foregoing), in each case,

subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents (to the extent appropriate in the applicable jurisdiction), in each case with the priority required by the Collateral Documents;

(f) subject to limitations and exceptions of this Agreement and the Collateral Documents, to the extent a security interest in and Mortgages on any Material Real Property are required pursuant to clause (e) above or under Sections 6.11, 6.13 or 6.16 (each, a “**Mortgaged Property**”), the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to such Mortgaged Property duly executed and delivered by the record owner of such property, together with evidence such Mortgage has been duly executed, acknowledged and delivered by a duly authorized officer of each party thereto, in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien (subject only to Liens described in clause (ii) below) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent (it being understood that if a mortgage tax or similar charge will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 100% of the fair market value of the property covered by such Mortgage (as reasonably determined by the Lead Borrower in good faith) at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value), (ii) a fully paid American Land Title Association Lender’s policy of title insurance (or a marked-up title insurance commitments having the effect of a policy of title insurance) on such Mortgaged Property naming the Collateral Agent as the insured for its benefit and that of the Secured Parties and their respective successors and assigns (each, a “**Mortgage Policy**,” and collectively, the “**Mortgage Policies**”) issued by a nationally recognized title insurance company reasonably acceptable to the Collateral Agent in form and substance and in an amount reasonably acceptable to the Collateral Agent (not to exceed 100% of the fair market value of the property covered thereby), insuring such Mortgage to be a valid subsisting first priority Lien on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 or Liens otherwise consented to by the Collateral Agent, each of which shall (A) to the extent reasonably necessary, include such coinsurance and reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Collateral Agent, (B) contain a “tie-in” or “cluster” endorsement, if available, and applicable, under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), and (C) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including but not limited to endorsements on matters relating to usury, first loss, zoning, contiguity, doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot, revolving credit and so-called comprehensive coverage over covenants and restrictions), to the extent such endorsements are available in the applicable jurisdiction at commercially reasonable rates; *provided, however*, that in lieu of a zoning endorsement the Collateral Agent shall accept a zoning report from a nationally recognized zoning report provider, (iii) an opinion from local counsel in each jurisdiction (A) where such Mortgaged Property is located regarding the enforceability and perfection of such Mortgage and any related fixture filings and (B) where the applicable Loan Party granting the Mortgage on such Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Collateral Agent, (iv) a completed “life of the loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance), duly executed and acknowledged by the applicable Loan Party if required by Flood Insurance Laws (as defined below), together with evidence of flood insurance, to the extent required under Section 6.07(c) hereof and (v) a new ALTA or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from such Mortgage Policy and issue the endorsements required in clause (ii) above;



(g) except as otherwise contemplated by this Agreement or any Collateral Document, all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and filings with the United States Patent and Trademark Office and United States Copyright Office, required by the Collateral Documents, applicable Law or reasonably requested by the Collateral Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Collateral Documents and perfect such Liens to the extent required by, and with the priority required by, the Collateral Documents and the other provisions of the term “Collateral and Guarantee Requirement,”

shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or recording; and

(h) after the Closing Date, each Restricted Subsidiary of the Lead Borrower that is not then a Guarantor and not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Sections 6.11 or 6.13 and a party to the Collateral Documents in accordance with Section 6.11; *provided* that notwithstanding the foregoing provisions, any Subsidiary of the Lead Borrower that Guarantees (other than Guarantees by a Foreign Subsidiary of Indebtedness of another Foreign Subsidiary) the Senior Secured Notes or any Junior Financing with a principal amount in excess of the Threshold Amount or any Permitted Refinancing of any of the foregoing shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance or taking other actions with respect to the following (collectively, the “**Excluded Assets**”): (i) any interest in fee-owned Real Property (other than Material Real Properties) and all leasehold interests in Real Property; (ii) motor vehicles and other assets subject to certificates of title, letter of credit rights (except to the extent constituting a supporting obligation for other Collateral as to which perfection of the security interest in such other Collateral may be accomplished by the filing of a Uniform Commercial Code (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a Uniform Commercial Code financing statement)) and commercial tort claims with a value of less than \$10,000,000; (iii) pledges and security interests prohibited by applicable law, rule, regulation or contractual obligation (with respect to any such contractual restriction to the extent permitted under this Agreement and binding on such assets on the Closing Date or on the date of the acquisition thereof or entered into in connection with the incurrence of indebtedness of the type contemplated by clause (u) of Section 7.01 (but not entered into in contemplation thereof (other than in connection with the incurrence of indebtedness of the type contemplated clause (u) of Section 7.01)) (in each case, except to the extent such prohibition is unenforceable after giving effect to the applicable provisions of the Uniform Commercial Code of any applicable jurisdiction) or which could require governmental (including regulatory) consent, approval, license or authorization to be pledged (unless such consent, approval, license or authorization has been received); (iv) Equity Interests in any Person other than Wholly-Owned Subsidiaries to the extent the pledge thereof is not permitted by the terms of such Person’s organizational documents, joint venture agreements or shareholder agreements or similar contractual obligation; (v) any property or assets to the extent a security interest therein could result in material adverse tax consequences, to Holdings, the Lead Borrower, any direct or indirect parent entity of Holdings or any of the Lead Borrower’s direct or indirect Subsidiaries, as determined in good faith by the Lead Borrower; (vi) any lease, license, contract, agreement or other general intangible or any property subject to a purchase money security interest, Financing Lease Obligation, factoring or similar arrangement, in each case permitted under this Agreement, to the extent that a grant of a security interest therein would violate or invalidate such lease, license, contract, agreement or other general intangible, Financing Lease Obligations or purchase money arrangement or create a right of termination in favor of any other party thereto (other than a Loan Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable Law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other applicable Law notwithstanding such prohibition; (vii) those assets as to which the Administrative Agent and the Lead Borrower reasonably agree that the cost or other consequence of obtaining such a security interest or perfection thereof are excessive in relation to the value afforded thereby; (viii) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorization are prohibited or restricted thereby after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code and other applicable Law; (ix) “intent-to-use” trademark

applications prior to the filing and acceptance of a “Statement of Use” or “Amendment to Allege Use” with respect thereto; (x) assets subject to Liens securing Qualified Securitization Facilities permitted hereunder; (xi) any segregated accounts or funds held or received on behalf of third parties (other than the Borrowers

or any Guarantor); (xii) any equipment or other asset subject to Permitted Liens securing acquired debt permitted hereunder (limited to the acquired assets), sale and leaseback transactions, capital lease obligations, financing lease obligation or similar arrangement or other purchase money debt, if the contract or other agreement providing for such debt, sale and leaseback transaction or capital lease or financing lease obligation prohibits or requires the consent of any Person (other than the Borrowers or any Guarantor) as a condition to the creation of any other security interest on such equipment or asset and, in each case, such indebtedness and prohibition or requirement is permitted under this Agreement; (xiii) any property or assets owned by any Foreign Subsidiary (unless such Subsidiary becomes a Loan Party), Unrestricted Subsidiary or any subsidiary which is not a Loan Party, (xiv) any accounts used solely as payroll and other employee wage and benefit accounts, tax accounts (including, without limitation, sales tax accounts) and any tax benefit accounts, escrow accounts, fiduciary or trust accounts and any funds or property held in such accounts, (xv) to the extent pledges and security interests therein are prohibited or restricted by applicable Law, Equity Interests in any Subsidiaries that are a broker-dealer, state chartered trust company, national trust company or thrift limited to trust powers, (xvi) Margin Stock and (xvii) voting Equity Interests in any Foreign Subsidiary that is a CFC or any FSHCO, in each case, representing more than 65% of the voting power of all outstanding Equity Interests of such CFC or FSHCO.

(B) (i) the foregoing definition shall not require control agreements with respect to any cash, deposit accounts or securities accounts or any other assets requiring perfection through control agreements; (ii) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S., including any IP Rights registered in any non-U.S. jurisdiction, or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction), (iii) no landlord, mortgagee or bailee waivers shall be required, (iv) no notice shall be required to be sent to insurers, account debtors or other contractual third parties when no Event of Default has occurred and is continuing and (v) except to the extent that perfection and priority may be achieved by the filing of a financing statement under the Uniform Commercial Code with respect to a Borrower or a Guarantor, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clauses (i) or (ii) of this clause (B);

(C) the Collateral Agent in its discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking other actions with respect to, particular assets (including extensions beyond the Closing Date) where it reasonably determines, in consultation with the Lead Borrower, that the creation or perfection of security interests and Mortgages on, or obtaining of title insurance or taking other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents; *provided* that the Collateral Agent shall have received on or prior to the Closing Date (i) Uniform Commercial Code financing statements in appropriate form for filing under the Uniform Commercial Code in the jurisdiction of incorporation or organization of each Loan Party and (ii) any certificates or instruments representing or evidencing Equity Interests of the Lead Borrower and any other direct subsidiary of the Lead Borrower (other than Equity Interests constituting Excluded Assets) accompanied by instruments of transfer and stock powers undated and endorsed in blank (or confirmation in lieu thereof reasonably satisfactory to the Collateral Agent or its counsel that such certificates, powers and instruments have been sent for overnight delivery to the Collateral Agent or its counsel); *provided further* that the Collateral Agent shall have received the items set forth on Schedule 6.16 on or prior to the date(s) set forth therein;

(D) in the event that a Foreign Subsidiary becomes a Guarantor such Loan Party shall grant a perfected lien on substantially all of its assets pursuant to arrangements reasonably agreed between the Administrative Agent and the Lead Borrower, pursuant to documentation and subject to customary limitations in such jurisdiction as may be reasonably agreed between the Administrative Agent and the Lead Borrower, and nothing in the definition of “Excluded Asset” or other limitation in this Agreement shall in any way limit or restrict the pledge of assets and property by any such Foreign Subsidiary that is a Guarantor or the pledge of the Equity Interests of such Foreign Subsidiary by any other Loan Party that holds such Equity Interests; and

(E) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations (if any) set forth in this Agreement and the Collateral Documents.

“**Collateral Documents**” means, collectively, the Security Agreement, the Holdings Pledge Agreement, the Intellectual Property Security Agreements, each of the Mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent pursuant to Section 4.01, Section 6.11, Section 6.13 or Section 6.16 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent or the Collateral Agent for the benefit of the Secured Parties.

“**Commitment**” means a Revolving Credit Commitment, Incremental Revolving Credit Commitment, Extended Revolving Credit Commitment of a given Extension Series, Other Revolving Credit Commitment of a given Refinancing Series, Initial Term Commitment, Incremental Term Commitment or Refinancing Term Commitment of a given Refinancing Series, as the context may require.

“**Commitment Fee Rate**” means with respect to the unused Revolving Credit Commitments, a percentage per annum equal to 0.40%; *provided, however*, from and after the date of delivery of the Lead Borrower’s financial statements for the first full quarter ending after the Closing Date, the “Commitment Fee Rate” will be determined pursuant to the “Applicable Rate”. Any increase or decrease in the Commitment Fee Rate shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a).

“**Committed Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, 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 Lead Borrower.

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

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“**Company**” has the meaning given to such term in the Preliminary Statements hereto.

“**Company Parties**” means the collective reference to Holdings, the Lead Borrower and its Restricted Subsidiaries, and “**Company Party**” means any one of them.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii). “**Compliance**

**Certificate**” means a certificate substantially in the form of Exhibit E-1.

“**Conforming Changes**” mean with respect to the use, administration of or any conventions associated with any proposed Successor Rate for a Permitted Foreign Currency, any conforming changes to the definitions of “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 such Permitted Foreign Currency (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 such Permitted Foreign Currency 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.

“**Consolidated EBITDA**” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, the following, in each case (and to the extent applicable and other than clause (7) below) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(1) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period;  
plus

(2) the Fixed Charges of such Person and its Restricted Subsidiaries for such period; plus

(3) depreciation, amortization (including amortization of intangibles, deferred financing fees, debt incurrence costs, commissions, fees and expenses, but excluding amortization of prepaid cash expenses that were paid in a prior period), depletion and other non-cash expenses or charges (including any write-offs of debt issuance or deferred financing costs or fees and impairment charges and the impact on depreciation and amortization of purchase accounting, but excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses or charges were deducted in computing such Consolidated Net Income; plus

(4) the amount of net loss resulting from the payment of any premiums, fees or similar amounts that are required to be paid under the terms of the instrument(s) governing any Indebtedness upon the repayment, prepayment or other extinguishment of such Indebtedness in accordance with the terms of such Indebtedness; plus

(5) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP; plus

(6) any fees and expenses, including deferred amortization and deferred financing costs, paid in connection with the Transactions; plus

(7) the amount of (x) pro forma “run rate” cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Lead Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Lead Borrower) within 24 months after the Closing Date (including from any actions taken in whole or in part prior to the Closing Date), net of the amount of actual benefits realized during such period from such actions and (y) pro forma “run rate” cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, investments, dispositions, divestitures, restructurings, operating improvements, cost savings initiatives and other similar transactions or initiatives that are reasonably identifiable and factually supportable and projected by the Lead Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in each case, including any steps or actions taken in whole or in part prior to the Closing Date or the applicable consummation date of such transaction, initiative or event) or are expected to be taken (in the good faith determination of the Lead Borrower) within 24 months after any such transaction, initiative or event is consummated, net the amount of actual benefits realized during such period from such actions, in each case, calculated on a pro forma basis as though



such cost savings, operating expense reductions and synergies had been realized on the first day of such period for which Consolidated EBITDA is being determined and as if such cost savings, operating expense reductions and synergies were realized on the first day of the applicable period for the entirety of such period; *provided* that no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (7) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period; *provided* that the aggregate amount added back pursuant to this clause (7) for any period of four fiscal quarters shall not exceed 20% of Consolidated EBITDA for such period (calculated prior to giving effect to this clause (7)); minus

(9) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business, in each case, on a consolidated basis and determined in accordance with GAAP.

Unless otherwise specified herein, “Consolidated EBITDA” refers to Consolidated EBITDA of the Lead Borrower.

“**Consolidated First Lien Net Debt**” means Consolidated Total Net Debt *minus* the sum of (i) the portion of Indebtedness of the Lead Borrower or any Restricted Subsidiary included in Consolidated Total Net Debt that is not secured by any Lien on the Collateral and (ii) the portion of Indebtedness of the Lead Borrower or any Restricted Subsidiary included in Consolidated Total Net Debt that is secured by Liens on the Collateral, which Liens are expressly subordinated or junior to the Liens securing the Obligations.

“**Consolidated First Lien Net Leverage Ratio**” means, with respect to any four-quarter period, the ratio of (a) Consolidated First Lien Net Debt as of the last day of such period to (b) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for such period.

“**Consolidated Fixed Charge Coverage Ratio**” means, with respect to any four-quarter period, the ratio of (a) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for such period to (b) Fixed Charges for such period.

“**Consolidated Interest Expense**” means, for any period, the sum, without duplication, of:

(1) consolidated interest expense of the Lead Borrower and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of OID resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of Swap Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Financing Lease Obligations, and (e) net payments, if any made (less net payments, if any, received), pursuant to interest rate Swap Obligations with respect to Indebtedness, and excluding (o) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under this Agreement or other credit facilities, (p) any additional interest with respect to failure to comply with any registration rights agreement with respect to any securities, (q) costs associated with obtaining Swap Obligations, (r) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with the Transactions or any acquisition, (s) penalties and interest relating to taxes, (t) any “additional interest” or “liquidated damages” with respect to other securities for failure to timely comply with registration rights obligations, (u) amortization or expensing of deferred financing fees, amendment and consent fees, debt issuance costs, commissions, fees, expenses and discounted liabilities and any other amounts of non-cash interest, (v) any expensing of bridge, commitment and other financing fees and any other fees related to the Transactions or any acquisitions after the Closing Date, (w) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility, (x) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, cost or penalty, (y) interest expense attributable to a parent entity resulting from push-down accounting, and (z) any lease, rental or other expense in connection with a Non-Financing Lease Obligation); *plus*

(2) consolidated capitalized interest of the Lead Borrower and its Restricted Subsidiaries for such period, whether paid or accrued; less

(3) interest income of the Lead Borrower and its Restricted Subsidiaries for such period.



For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Lead Borrower or to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP (or, if not implicit, as otherwise determined in accordance with GAAP).

“**Consolidated Net Income**” means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis determined in accordance with GAAP and without any reduction in respect of Preferred Stock dividends; provided that, to the extent included therein,

(1) all extraordinary gains and losses and all gains and losses realized in connection with any sale or other disposition of assets outside of the ordinary course of business, the disposition of securities or the early extinguishment or repurchase of Indebtedness or Swap Obligations, together with any related provision for taxes on any such gain, will be excluded;

(2) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be excluded, except to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;

(3) for purposes of determining the amount of Restricted Payments that may be made pursuant to clause (b) of the Cumulative Credit, the net income (or loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders; provided that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in Cash Equivalents (or to the extent converted, or having the ability to be converted, into Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;;

(4) the cumulative effect of a change in accounting principles will be excluded;

(5) any unrealized gains, losses, expenses or charges resulting from hedging, option, warrant or other derivative transactions (including, without limitation, with respect to Swap Obligations or Permitted Convertible Notes Offerings) will be excluded;

(6) any (a) non-cash compensation charges, (b) non-cash costs or expenses resulting from stock option plans, employee benefit plans, compensation charges or postemployment benefit plans, or grants or awards of stock, stock appreciation or similar rights, stock options, restricted stock, Preferred Stock or other rights and (c) impairments, write-offs or write-downs of goodwill or other assets will be excluded;

(7) any gain or loss for such period from currency transaction gains or losses or net gains or losses related to currency remeasurements of Indebtedness will be excluded;

(8) any unrealized net after-tax income (loss) from Swap Obligations or cash management Obligations and the application of Accounting Standards Codification Topic 815 “Derivatives and Hedging” or from other derivative instruments will be excluded;

(9) any non-cash interest expense resulting from the application of Accounting Standards Codification Topic 470-20 “Debt — Debt with Conversion Options — Recognition” will be excluded;

(10) any charges resulting from the application of Accounting Standards Codification Topic 805 “Business Combinations,” Accounting Standards Codification Topic 350 “Intangibles — Goodwill and

Other,” Accounting Standards Codification Topic 360-10-35-15 “Impairment or Disposal of Long-Lived Assets,” Accounting Standards Codification Topic 480-10-25-4 “Distinguishing Liabilities from Equity — Overall — Recognition” or Accounting Standards Codification Topic 820 “Fair Value Measurements and Disclosures” shall be excluded;

(11) any charges resulting from amortization of actuarial gains and losses under Accounting Standards Codification Topic 715 “Compensation — Retirement Benefits” will be excluded;

(12) any deferred financing costs and original issue discounts amortized or written off, any premiums and prepayment penalties, breakage costs, other related fees, expenses or reserves paid or recorded in connection with any acquisition, disposition, financing, refinancing or repayment, including the expensing of bridge, commitment and other financing costs, and any fees, expenses, charges or change in control payments related to such transactions (including any costs relating to auditing prior periods, any transition-related expenses, and transaction expenses incurred before, on or after the effective date of such transactions and costs and expenses after the effective date of such transactions related to the employment or transition of terminated employees) will be excluded;

(13) any non-cash costs related to the termination of any employee benefit plan will be excluded;

(14) any non-recurring or unusual charges, expenses, gains or losses will be excluded;

(15) non-cash charges for deferred tax asset valuation allowances shall be excluded;

(16) any expenses or charges related to streamlining and restructuring activities (including related payroll, relocation and contract termination charges or expenses), facilities-exiting or facilities closure, idling or repurposing activities, business optimization activities, asset write-downs or write-offs, reductions in force, furloughs, severance, retention bonuses and professional fees related to any of the foregoing, will be excluded; and

(17) if such Person is treated as a disregarded entity or partnership for U.S. federal, state and/or local income tax purposes for such period or any portion thereof, the amount of distributions actually made to any direct or indirect parent company of such Person in respect of such period in accordance with Section 7.06(i) shall be included in calculating Consolidated Net Income as though such amounts had been paid as taxes directly by such Person for such period.

Unless otherwise specified herein, “Consolidated Net Income” refers to Consolidated Net Income of the Lead Borrower.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted herein.

“**Consolidated Secured Net Debt**” means Consolidated Total Net Debt *minus* the sum of the portion of Indebtedness of the Lead Borrower or any Restricted Subsidiary included in Consolidated Total Net Debt that is not secured by any Lien on the Collateral.

“**Consolidated Secured Net Leverage Ratio**” means, with respect to any four-quarter period, the ratio of  
(a) Consolidated Secured Net Debt as of the last day of such period to (b) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for such period.



“**Consolidated Subsidiaries**” means Subsidiaries that would be consolidated with Holdings in accordance with GAAP.

“**Consolidated Total Net Debt**” means, as of any date of determination, the aggregate principal amount of Indebtedness of the Lead Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transactions or any Permitted Acquisition), consisting of Indebtedness for borrowed money, purchase money indebtedness, Attributable Indebtedness and debt obligations evidenced by promissory notes, bonds, debentures, loan agreements or similar instruments, *minus* the aggregate amount of all unrestricted cash and Cash Equivalents not to exceed \$300,000,000 on the balance sheet of the Lead Borrower and its Restricted Subsidiaries as of such date; *provided* that Consolidated Total Net Debt shall not include Indebtedness (i) in respect of letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until three (3) Business Days after such amount is drawn and (ii) of Unrestricted Subsidiaries; it being understood, for the avoidance of doubt, that obligations under Swap Contracts or in respect of Non-Financing Lease Obligations do not constitute Consolidated Total Net Debt.

“**Consolidated Total Net Leverage Ratio**” means, with respect to any four-quarter period, the ratio of (a) Consolidated Total Net Debt as of the last day of such period to (b) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for such period.

“**Consolidated Working Capital**” means, with respect to the Lead Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination *minus* Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.” “**Contractual**

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

“**Control**” has the meaning set forth in the definition of “Affiliate.”

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, other than the Investors, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in Holdings and/or other companies.

“**Credit Agreement Refinancing Indebtedness**” means (a) Permitted First Priority Refinancing Debt, (b) Permitted Junior Lien Refinancing Debt, (c) Permitted Unsecured Refinancing Debt or (d) other Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or part, existing Term Loans and Revolving Credit Loans (or Commitments in respect to Revolving Credit Loans), or any then-existing Credit Agreement Refinancing Indebtedness (“**Refinanced Debt**”); *provided* that (i) such Indebtedness has a maturity no earlier, and,



in the case of Refinancing Debt in the form of term loans or notes, a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt (and in any case no earlier than the maturity of the Revolving Credit Facility), (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt *plus* accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with the refinancing, (iii) the other terms and conditions of such Indebtedness shall either, at the option of the Borrowers (I) reflect market terms and conditions (taken as a whole) at the time of incurrence (as determined by the Borrowers) (*provided* that to the extent any financial maintenance covenant is added for the benefit of such Credit Agreement

Refinancing Indebtedness, such financial maintenance covenant shall be added for the benefit of the Revolving Credit Facility that then benefits from a financial maintenance covenant and is remaining outstanding (except to the extent such financial maintenance covenant is applicable only to periods after the Latest Maturity Date of such Revolving Credit Facility)) or (II) if not consistent with the terms of the Refinanced Debt being refinanced or replaced, not materially more restrictive (taken as a whole) on the Lead Borrower and its Restricted Subsidiaries (as determined by the Lead Borrower) than those applicable to the Refinanced Debt being refinanced or replaced (except for (x) pricing, premiums, fees, rate floors and prepayment and redemption terms and (y) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness and it being understood that to the extent any financial maintenance covenant is added for the benefit of such (A) Credit Agreement Refinancing Indebtedness in the form of Refinancing Term Loans or refinancing notes or other debt securities (whether issued in a public offering, Rule 144A, private placement or otherwise), no consent shall be required from the Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant is also added for the benefit of each Facility remaining outstanding after the incurrence or issuance of such Credit Agreement Refinancing Indebtedness or (B) Credit Agreement Refinancing Indebtedness in the form of Other Revolving Credit Commitments or Other Revolving Credit Loans, no consent shall be required from the Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant (x) is also added for the benefit of the Revolving Credit Facility that then benefits from a financial maintenance covenant and is remaining outstanding after the incurrence of such Other Revolving Credit Commitments or Other Revolving Credit Loans or (y) applies only to periods after the Latest Maturity Date of such Revolving Credit Facility) (in each case, *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (iii) shall be conclusive evidence that such terms and conditions satisfy such requirement), and (iv) such Refinanced Debt shall be repaid, repurchased, retired, defeased or satisfied and discharged, all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, and all commitments thereunder terminated, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension. “**CRR**” means

the Regulation (EU) No. 575/2013 of the European Parliament and of the Council of

26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the greater of (x) \$150,000,000 and (y) 25% of LTM Consolidated EBITDA; *plus*

(b) 50% of the Consolidated Net Income of the Lead Borrower and its Restricted Subsidiaries for the period (taking as one account period) from the beginning of the fiscal quarter in which the Closing Date occurs to the end of the Lead Borrower’s most recently ended fiscal quarter for which financial statements are internally available; *plus*

(c) [reserved]; *plus*

(d) the cumulative amount of cash and Cash Equivalent proceeds (other than Excluded Contributions and proceeds of Designated Preferred Stock) and/or the fair market value of assets received from (i) the sale or transfer of Equity Interests (other than any Disqualified Equity Interests and other than any Designated Equity Contribution and proceeds of Designated Preferred Stock) of the Lead Borrower or any direct or indirect parent of the Lead Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) which proceeds or

assets have been contributed as common equity to the capital of the Lead Borrower or a Restricted Subsidiary or (ii) the common Equity Interests of the Lead Borrower (or Holdings or any direct or indirect parent of the Lead Borrower) (other than Disqualified Equity Interests of the Lead Borrower (or any direct or indirect parent of the Lead Borrower) and other than any Designated Equity Contribution) issued upon conversion of Indebtedness

(other than Indebtedness that is contractually subordinated to the Obligations) of the Lead Borrower or any Restricted Subsidiary of the Lead Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party, in each case, not previously applied for a purpose other than use in the Cumulative Credit (including, for the avoidance of doubt, for the purposes of Section 7.03(m)(y)); *plus*

(e) 100% of the aggregate amount of contributions to the common capital (other than from a Restricted Subsidiary and other than any Designated Equity Contribution) of the Lead Borrower received after the Closing Date (other than Excluded Contributions and proceeds of Designated Preferred Stock), excluding any such amount that has been applied in accordance with Section 7.03(m)(y); *plus*

(f) 100% of the aggregate amount received by the Lead Borrower or any Restricted Subsidiary from:

(A) the sale or transfer (other than to the Lead Borrower or any Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary, joint venture or any minority investments (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary, joint venture or minority investment constituted an Investment pursuant to Section 7.02), or

(B) any dividend or other distribution (other than an Excluded Contribution) by an Unrestricted Subsidiary or received in respect of any minority investment (except (i) to the extent increasing Consolidated Net Income or (ii) to the extent the Investment in such Unrestricted Subsidiary, joint venture or minority investment constituted an Investment pursuant to Section 7.02)), or

(C) any interest, returns of principal payments and similar payments by an Unrestricted Subsidiary or joint venture or received in respect of any minority investments (except (i) to the extent increasing Consolidated Net Income or (ii) to the extent the Investment in such Unrestricted Subsidiary, joint venture or minority investment constituted an Investment pursuant to Section 7.02)); *plus*

(g) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Lead Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Lead Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Section 7.02(n)(y); *plus*

(h) to the extent not already included in Consolidated Net Income, an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Lead Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.02(n)(y); *plus*

(i) 100% of the aggregate amount of any Declined Proceeds; *minus*

(j) any amount of the Cumulative Credit used to make Investments pursuant to Section 7.02(n)(y) after the Closing Date and prior to such time; *minus*

(k) any amount of the Cumulative Credit used to pay dividends or make distributions pursuant to Section 7.06(h)(y) after the Closing Date and prior to such time; *minus*

(l) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.10(a)(iv)(y) after the Closing Date and prior to such time.

“**Current Assets**” means, with respect to the Lead Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) of the Lead

Borrower and the Restricted Subsidiaries that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits (but excluding assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments).

“**Current Liabilities**” means, with respect to the Lead Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities of the Lead Borrower and the Restricted Subsidiaries that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is past due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, and (e) any Revolving Credit Exposure.

“**Daily Simple SOFR**” with respect to any applicable determination date means the secured overnight financing rate (“**SOFR**”) published on such date 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).

“**Debt Fund Affiliate**” means any Affiliate of the Investors or Holdings that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course.

“**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.

“**Declined Proceeds**” has the meaning set forth in Section 2.05(b)(viii). “**Deemed**

**Date**” has the meaning set forth in Section 7.03.

“**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 with respect to any overdue amount (except overdue principal other than overdue principal on a Base Rate Loan), an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate, if any, applicable to Revolving Credit Loans that are Base Rate Loans *plus* (c) 2.0% per annum; *provided* that with respect to the overdue principal, in respect of 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* 2.0% per annum, in each case to the fullest extent permitted by applicable Laws.

“**Defaulting Lender**” means any Lender whose acts or failure to act, whether directly or indirectly, cause it to meet any part of the definition of “Lender Default.”

“**Designated Equity Contribution**” has the meaning set forth in Section 8.05(a).

“**Designated Preferred Stock**” means Preferred Stock of the Lead Borrower or any direct or indirect parent company thereof (in each case other than Disqualified Equity Interests) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Lead Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an officer’s certificate from a Responsible Officer of the Lead Borrower, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in the Cumulative Credit.

**“Discount Prepayment Accepting Lender”** has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Discount Range**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1). “**Discount Range**

**Prepayment Notice**” means a written notice of a Borrower Solicitation of Discount

Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C)(1) substantially in the form of Exhibit L-4.

“**Discount Range Prepayment Offer**” means the irrevocable written offer by a Lender, substantially in the form of Exhibit L-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“**Discount Range Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(C)(1). “**Discount**

**Range Proration**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Discounted Prepayment Determination Date**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Discounted Prepayment Effective Date**” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Lead Borrower and the Auction Agent.

“**Discounted Term Loan Prepayment**” has the meaning set forth in Section 2.05(a)(v)(A). “**Disposition**” or

“**Dispose**” means the sale, transfer, license, lease or other disposition (including any Sale and Lease-Back Transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise), 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; *provided that* “Disposition” and “Dispose” shall not be deemed to include any issuance by Holdings of any of its Equity Interests to another Person.

“**Disqualified Equity Interests**” means any Equity Interest that, 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 and the termination or expiration of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, backstopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than 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 and the expiration or termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been



Cash Collateralized, backstopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), 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 ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of future, present or former employees, directors, officers, managers or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Borrower (or any direct or indirect

parent thereof), the Lead Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Lead Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“**Disqualified Lenders**” means (i) those Persons identified by the Lead Borrower (or one of its Affiliates) to the Administrative Agent in writing on May 14, 2021, (ii) competitors (and such competitors’ sponsors and Affiliates identified in writing or reasonably identifiable as such solely on the basis of their names) of the Lead Borrower identified by the Lead Borrower to the Administrative Agent in writing (x) from time to time prior to the date of the bank meeting in connection with the Term Facilities prior to the Closing Date and (y) thereafter (including after the Closing Date) from time to time and (iii) any Affiliate of any Person described in clause (i) or competitor described in clause (ii) that is identified by the Lead Borrower to the Administrative Agent in writing from time to time or reasonably identifiable solely by name as an Affiliate of such Person, other than an Affiliate of such Person that is a Bona Fide Debt Fund; *provided* that (x) no updates to the list of Disqualified Lenders shall be deemed to retroactively disqualify any parties that have previously validly acquired an assignment or participation in respect of the Loans from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders and (y) notwithstanding anything herein to the contrary, the Lead Borrower may withhold consent for any assignments to any Affiliate of a Disqualified Lender (to the extent such consent is otherwise required under Section 10.07) regardless of whether such assignee is reasonably identifiable as an Affiliate of a Disqualified Lender solely on the basis of its name (other than with respect to Affiliates that are Bona Fide Debt Funds). The list of Disqualified Lenders shall be made available to any Lender upon request to the Administrative Agent, subject to customary confidentiality requirements.

“**Distressed Person**” has the meaning set forth in the definition of “Lender-Related Distress Event.” “**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.

“**Division Successor**” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Dollar Denominated Letter of Credit**” means any Letter of Credit incurred in Dollars. “**Dollar Denominated Loan**” means any Loan incurred in Dollars.

“**Dollar Equivalent**” means, with respect to an amount of an Approved Currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Issuer at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination) for the purchase of Dollars with such Approved Currency.

“**Domestic Subsidiary**” means any Subsidiary of the Lead Borrower that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Dutch Borrower**” means Affiliated Computer Services International B.V., a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*) organized under the laws of the Netherlands, having its official seat in

Amsterdam, the Netherlands and registered in the Trade Register of the Dutch Chamber of Commerce under number 34160388.

“**Dutch Civil Code**” means the *Burgerlijk Wetboek* of the Netherlands.

“**Early Opt-in Effective Date**” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

“**Early Opt-in Election**” means the occurrence of:

(1) a determination by the Administrative Agent, or a notification by the Lead Borrower to the Administrative Agent that the Lead Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(2) the joint election by the Administrative Agent and the Lead Borrower to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**ECF Payment Amount**” has the meaning set forth in Section 2.05(b).

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

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

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

“**Effective Yield**” means, as to any Loans of any Class, the effective yield on such Loans in an amount equal to the sum of (a) the applicable margin, (b) the interest rate (exclusive of applicable margin) after giving effect to any interest rate floors or similar devices and (c) all upfront or similar fees and OID (amortized over the shorter of (x) the original stated life of such Loans and (y) the four years following the date of incurrence thereof) payable generally to Lenders making such Loans, but excluding amendment fees, arrangement fees, structuring fees, commitment fees, underwriting fees or other fees payable to any lead arranger (or its affiliates) in connection with the commitment or syndication of such Indebtedness, consent fees paid to consenting Lenders, ticking fees on undrawn commitments and any other fees not paid or payable generally to all Lenders in the primary syndication of such Indebtedness.

“**Electronic Copy**” has the meaning set forth in Section 10.20. “**Electronic Record**” has the meaning set forth in Section 10.20. “**Electronic Signature**” has the meaning set forth in Section 10.20. “**Eligible Assignee**” has the meaning set forth in Section 10.07(a).

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

“**Environmental Laws**” means any applicable Law relating to pollution, protection of the Environment and natural resources, Hazardous Materials, or the protection of human health and safety as it relates to exposure to Hazardous Materials, including any applicable provisions of CERCLA.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of or relating to the Loan Parties or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of, or liability under or relating to, any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials or (d) the actual or alleged presence, Release or threatened Release of any Hazardous Materials, including, in each case of (a) through (d), any such liability which any Loan Party has retained or assumed pursuant to any written contract, agreement or other consensual arrangement.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**Equity Interests**” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“**Equityholding Vehicle**” means any direct or indirect parent entity of the Lead Borrower and any equityholder thereof through which Management Stockholders hold Equity Interests of the Lead Borrower or such parent entity.

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with a Loan Party or any Restricted Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) or (o) of the Code.

“**ERISA Event**” means (a) a Reportable Event; (b) a withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it 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 a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan or the receipt by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate of any notice that a Multiemployer Plan is insolvent, within the meaning of Title IV of ERISA or is in “endangered” or “critical” status, within the meaning of Section 432 of the Code or Section 305 of ERISA; (d) the filing by the PBGC of a notice of intent to terminate any Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Section 4041 or Section 4041A of ERISA, respectively, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) appointment of a trustee to administer any Pension Plan or Multiemployer Plan; (f) with respect to a Pension Plan, the failure to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (g) any Foreign Benefit Event; or (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 a Loan Party, any Restricted Subsidiary or any ERISA Affiliate.

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

“euro” means the single currency of participating member states of 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 and the Amsterdam Treaty of 1998.

**“Eurocurrency Rate”** means, (i) with respect to any Eurocurrency Rate Loans denominated in Dollars, for any Interest Period, 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 U.S. Dollars for a period equal in length to such Interest Period) (**“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) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, (ii) 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, (iii) with respect to any Eurocurrency Rate Loans denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate (**“CDOR”**), or a comparable or successor rate which rate is approved by the Administrative Agent, 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 **“CDOR Rate”**) at or about 10:00a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period and (iv) with respect to any Eurocurrency Rate Loans denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate (**“EURIBOR”**), or a comparable or successor rate which rate is approved by the Administrative Agent, 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 11:00a.m. (Brussels, Belgium time) on the Rate Determination Date with a term equivalent to such Interest Period. Notwithstanding the foregoing, solely with respect to the Revolving Credit Commitments and Initial Term A Loans, the Eurocurrency Rate in respect of any applicable Interest Period will be deemed to be zero if the Eurocurrency Rate for such Interest Period calculated pursuant to the foregoing provisions would otherwise be less than zero and solely with respect to the Initial Term B Loans, the Eurocurrency Rate will be deemed to be 0.50% if the Eurocurrency Rate calculated pursuant to the foregoing provisions would otherwise be less than 0.50%.

**“Eurocurrency Rate Loan”** means a Loan that bears interest at a rate based on the Eurocurrency Rate.

**“Eurocurrency Rate Revolving Loan”** means a Revolving Credit Loan bearing interest at a rate based on the Eurocurrency Rate. Eurocurrency Rate Revolving Loans may be denominated in any Approved Currency.

**“Event of Default”** has the meaning set forth in Section 8.01.

**“Excess Cash Flow”** means, for any period, an amount (which shall not be less than zero) equal to (a) the sum, without duplication, of (i) Consolidated Net Income for such period, (ii) an amount equal to the amount of all non-cash charges to the extent deducted in arriving at such Consolidated Net Income, (iii) decreases in Consolidated Working Capital and long-term accounts receivable of the Lead Borrower and its Restricted Subsidiaries for such period (other than any such decreases arising from acquisitions or dispositions by the Lead Borrower and its Restricted Subsidiaries completed during such period or the application of purchase accounting or related to any Qualified Securitization Facility), and (iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Lead Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) or any cash gain, in each case to the extent deducted in arriving at such Consolidated Net Income, *minus*

(b) the sum, without duplication, of (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income and cash charges included in clauses (1) through (15) of the definition of “Consolidated Net Income,” (ii) an amount equal to the aggregate net non-cash gain on Dispositions by the Lead Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such



Consolidated Net Income, (iii) increases in Consolidated Working Capital and long-term accounts receivable of the Lead Borrower and its Restricted Subsidiaries for such period (other than any such increases arising from acquisitions or dispositions by the Lead Borrower and its Restricted Subsidiaries during such period or the application of purchase accounting), (iv) without duplication of amounts deducted from Excess Cash Flow in prior periods or that would reduce any Excess Cash Flow payment pursuant to Section 2.05(b)(i), the aggregate consideration required to be paid in cash by the Lead Borrower and its Restricted Subsidiaries pursuant to binding contracts (the “**Contract Consideration**”) entered into prior to or during such period or planned cash expenditures (the “**Planned Expenditures**”), in each case, relating to acquisitions that constitute Investments permitted under this Agreement or Capital Expenditures to the extent expected to be

consummated or made, *plus* any restructuring cash expenses, pension payments or tax contingency payments that have been added to Excess Cash Flow pursuant to clause (a)(ii) above required to be made, in each case during the period of four consecutive fiscal quarters of Holdings following the end of such period; *provided* that to the extent the aggregate amount of internally generated cash actually utilized to finance such Investment or Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters, (v) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income and (vi) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset. Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Lead Borrower and its Restricted Subsidiaries on a consolidated basis.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Assets**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.” “**Excluded**

**Contribution**” means net cash proceeds, marketable securities or Qualified Proceeds received

by the Lead Borrower after the Closing Date from:

- (1) contributions to its common equity capital;
- (2) dividends, distributions, fees and other payments from any Unrestricted Subsidiaries or joint ventures or Investments in entities that are not Restricted Subsidiaries; and
- (3) the sale (other than to a Subsidiary of the Lead Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Lead Borrower) of Equity Interest (other than Disqualified Equity Interests and Preferred Stock) of the Lead Borrower (or any direct or indirect parent of the Lead Borrower to the extent contributed as common Equity Interests to the Lead Borrower),

in each case to the extent designated as Excluded Contributions by the Lead Borrower.

“**Excluded Subsidiary**” means (a) any Subsidiary that is not a wholly owned Subsidiary of Holdings, the Lead Borrower or any other Subsidiary Guarantor; provided, that any Subsidiary that is a Subsidiary Guarantor shall not be released as a Loan Party and become an Excluded Subsidiary as a result of a transfer of such Subsidiary Guarantor’s equity interests to any Affiliate of the Lead Borrower in connection with a non-bona fide transaction the primary purpose of which was to cause such entity to become an Excluded Subsidiary, (b) any Subsidiary that does not have total assets in excess of 2.5% of Total Assets, individually, or 5% of Total Assets in the aggregate together with all other Subsidiaries excluded via this clause (b), (c) any Securitization Subsidiary, (d) any Subsidiary that is prohibited by applicable Law (whether on the Closing Date or thereafter) or Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) or other third party (other than a Loan Party) consent, approval, license or authorization (unless such consent, approval, license or authorization has been obtained), (e) any other Subsidiary with respect to which the Administrative Agent and the Lead Borrower mutually agree that the burden or cost or other consequences (including any material adverse tax consequences) of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (f) any direct or indirect Foreign Subsidiary of the Lead Borrower, (g) any Subsidiary with respect to which the provision of a guarantee by it would result in material adverse tax consequences to the Lead Borrower, any direct or indirect parent entity of the Lead Borrower or any of the Lead Borrower’s direct or indirect Subsidiaries, in each case, as reasonably determined by the Lead Borrower in consultation with the Administrative Agent; *provided* that without limiting the other exceptions herein this clause (g) shall not apply to exclude any Domestic Subsidiary of

the Lead Borrower existing as of the Closing Date unless such material adverse tax consequences result from a change in law since the Closing Date, (h) any not-for-profit Subsidiaries, (i) any Unrestricted Subsidiaries, (j) any direct or indirect Subsidiary (x) that is a direct or indirect Domestic Subsidiary of a direct or indirect Foreign Subsidiary that is a CFC or (y) that owns no material assets other than capital stock of (i) one or more Foreign Subsidiaries that are CFCs or (ii) other Subsidiaries described in this

clause (j)(y) (any Subsidiary described in this clause (j)(y), a “**FSHCO**”), (k) any special purpose entities and (l) any Captive Insurance Subsidiaries and (m) any Subsidiaries that are a broker-dealer, state chartered trust company, national trust company or thrift limited to trust powers (collectively, the “**Regulated Subsidiaries**”) or any Subsidiary providing transfer agent services or similar services to such Regulated Subsidiaries; *provided* that for the avoidance of doubt (i) at the option of the Lead Borrower, any Excluded Subsidiary may issue a Guaranty and become a Guarantor as described in clause (iv) of the definition of “Guarantors” and (ii) any Person that becomes a Guarantor pursuant to clause (iii) of the definition of “Guarantors” shall cease to constitute an Excluded Subsidiary, or be released from its obligations under the Guaranty, solely on the basis that, prior to becoming a Guarantor, such Person constituted an Excluded Subsidiary.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty 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 of any thereof) (i) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 11.12 and any other applicable agreement for the benefit of such Guarantor and any and all applicable guarantees of such Guarantor’s Swap Obligations by other Loan Parties), at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Guarantor as specified in any agreement between the relevant Loan Parties and the Approved Counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to the Swap for which such guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

“**Existing Credit Agreement**” means the Credit Agreement, dated as of December 17, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) among Holdings, the Lead Borrower, the Dutch Borrower, Conduent Finance, Inc., the lenders party thereto from time to time and JPMorgan Chase Bank, N.A., as administrative agent.

“**Existing Letters of Credit**” means those letters of credit in existence on the Closing Date and listed on Schedule 1.01D hereto.

“**Existing Revolver Tranche**” has the meaning set forth in Section 2.16(b). “**Existing**

**Term Loan Tranche**” has the meaning set forth in Section 2.16(a). “**Expiring Credit**

**Commitment**” has the meaning set forth in Section 2.04(g).

“**Extended Revolving Credit Commitments**” has the meaning set forth in Section 2.16(b).

“**Extended Revolving Credit Loans**” means one or more Classes of Revolving Credit Loans that result from an Extension Amendment.

“**Extended Term Loans**” has the meaning set forth in Section 2.16(a).

“**Extending Revolving Credit Lender**” has the meaning set forth in Section 2.16(c).

“**Extending Term Lender**” has the meaning set forth in Section 2.16(c).

“**Extension**” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“**Extension Amendment**” has the meaning set forth in Section 2.16(d).

“**Extension Election**” has the meaning set forth in Section 2.16(c).

“**Extension Request**” means any Term Loan Extension Request or a Revolver Extension Request, as the case may be.

“**Extension Series**” means any Term Loan Extension Series or a Revolver Extension Series, as the case may be.

“**Facility**” means the Initial Term A Loans, the Initial Term B Loans, a given Class of Incremental Term Loans, a given Refinancing Series of Refinancing Term Loans, a given Extension Series of Extended Term Loans, the Revolving Credit Facility, a given Class of Incremental Revolving Credit Commitments, a given Refinancing Series of Other Revolving Credit Commitments or a given Extension Series of Extended Revolving Credit Commitments, as the context may require.

“**FATCA**” means Sections 1471 through 1474 of the Code as of the Closing Date (or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with), any current or future Treasury Regulations or other published administrative guidance promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above), any intergovernmental agreements implementing the foregoing, and any laws, fiscal or regulatory legislation, or official administrative guidance, in each case, adopted by a non-U.S. jurisdiction to implement the foregoing.

“**Federal Funds Effective 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.

“**Financial Covenant**” has the meaning set forth in Section 7.09.

“**Financial Covenant Event of Default**” has the meaning provided in Section 8.01(b).

“**Financing Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Financing Lease; *provided* that any obligations of the Lead Borrower or its Restricted Subsidiaries either existing on the Closing Date or created prior to any recharacterization described below (i) that were not included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as financing or capital lease obligations and (ii) that are subsequently recharacterized as financing or capital lease obligations or indebtedness due to a change in accounting treatment or otherwise, shall for all purposes under this Agreement (including, without limitation, the calculation of Consolidated Net Income and Consolidated EBITDA) not be treated as financing or capital lease obligations, Financing Lease Obligations or Indebtedness.

“**Financing Leases**” means all leases that have been or are required to be, in accordance with GAAP, recorded as a financing or capital leases (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP as in effect on January 1, 2015; *provided* that for all purposes hereunder the amount of obligations under any Financing Lease shall be the amount thereof accounted for as a liability on a balance sheet in accordance with GAAP as in effect on January 1, 2015.

“**FIRREA**” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“**Fixed Charges**” means, with respect to the Lead Borrower and its Restricted Subsidiaries for any period, the sum of, without duplication:

- (1) Consolidated Interest Expense of the Lead Borrower and its Restricted Subsidiaries for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Equity Interests during such period.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**Foreign Benefit Event**” means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law or in excess of the amount that would be permitted absent a waiver from any applicable Governmental Authority or (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments.

“**Foreign Currency Denominated Letter of Credit**” means any Letter of Credit denominated in an Approved Foreign Currency, other than, with respect to each L/C Issuer, those Approved Foreign Currencies not authorized to be issued by such L/C Issuer as notified to the Administrative Agent and the Borrowers from time to time.

“**Foreign Currency Denominated Loan**” means any Loan incurred in any Approved Foreign Currency. “**Foreign Disposition**” has the meaning set forth in Section 2.05(b)(x).

“**Foreign Pension Plan**” means any benefit plan established, maintained or contributed to by a Loan Party or any Restricted Subsidiary for the benefit of employees of a Loan Party or any Restricted Subsidiary employed and residing outside the United States (other than any plan maintained exclusively by a Governmental Authority.)

“**Foreign Subsidiary**” means any direct or indirect Subsidiary of the Lead Borrower that is not a Domestic Subsidiary.

“**Foreign Subsidiary Total Assets**” means the total assets of the Foreign Subsidiaries, as determined on a consolidated basis in accordance with GAAP in good faith by a Responsible Officer.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States. “**Free and Clear Incremental Amount**” has the meaning set forth in Section 2.14(d)(v).

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Pro Rata Share 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 Pro Rata Share 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.

“**FSHCO**” has the meaning set forth in the definition of “Excluded Subsidiary.”

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**GAAP**” means at the election of the Lead Borrower (such election to be made no more than one time during the term of this Agreement), (a) the accounting standards and interpretations adopted by the International Accounting Standard Board, as in effect from time to time (“**IFRS**”) if the Lead Borrower’s financial statements are at such time prepared in accordance with IFRS or (b) generally accepted accounting principles in the United States of America, as in effect from time to time (“**U.S. GAAP**”) if the Lead Borrower’s financial statements are at such time prepared in accordance with U.S. GAAP; provided, however, that (i) all references to codified accounting standards specifically named in this Agreement shall be deemed to include any successor, replacement, amendment or updated accounting standard under IFRS or U.S. GAAP, as applicable, (ii) neither IFRS nor U.S. GAAP shall include the policies, rules and regulations of the SEC, the American Institute of Certified Public Accountants, the International Accounting Standards Board or any other applicable regulatory or governing body applicable only to public companies, (iii) any calculation or determination in this Agreement that requires the application of GAAP across multiple quarters need not be calculated or determined using the same accounting standard for each constituent quarter. The Lead Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness.

“**GAAP Accounting Changes**” has the meaning specified in Section 1.03.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank, self-regulatory organization or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning set forth in Section 10.07(i).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary 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 monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary 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 monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary 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 monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “**Guarantee**” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets not prohibited under this Agreement (other than such obligations with respect to Indebtedness). 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 11.01.

“**Guarantors**” means, collectively, (i) Holdings, (ii) each U.S. Borrower (other than with respect to its own Obligations), (iii) the wholly owned Domestic Subsidiaries of the Lead Borrower (other than any Excluded Subsidiary) and (iv) those wholly owned Domestic Subsidiaries of the Lead Borrower that issue a Guaranty of the

Obligations after the Closing Date pursuant to Section 6.11 or any other Person (including any Excluded Subsidiary) organized under the laws of the United States, any state thereof or the District of Columbia or, to the extent reasonably acceptable to the Administrative Agent (and subject to clause (D) of the Collateral and Guarantee Requirement), any other jurisdiction that, at the option of the Lead Borrower, issues a Guaranty of the Obligations after the Closing Date.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon gas, pesticides, fungicides, fertilizers, or toxic mold, in each case that are regulated pursuant to, or which would give rise to liability under, applicable Environmental Law.

“**Holding Company**” means any Person so long as such Person directly or indirectly holds 100% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder or another Holding Company), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of such Person.

“**Holdings**” means Holdings, if it is the direct parent of the Lead Borrower, or, if not, any Subsidiary of Holdings that directly owns 100% of the issued and outstanding Equity Interests in the Lead Borrower and issues a Guaranty of the Obligations and agrees to assume the obligations of “Holdings” pursuant to this Agreement and the other Loan Documents pursuant to one or more instruments in form and substance reasonably satisfactory to the Administrative Agent.

“**Holdings Pledge Agreement**” means the Holdings Pledge Agreement, dated as of the Closing Date, among Holdings and the Collateral Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“**Honor Date**” has the meaning set forth in Section 2.03(c)(i).

“**Identified Participating Lenders**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Identified Qualifying Lenders**” has the meaning set forth in Section 2.05(a)(v)(D)(3). “**IFRS**” has the meaning set forth in the definition of “GAAP”.

“**Immaterial Subsidiary**” has the meaning set forth in Section 8.03.

“**Immediate Family Members**” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), the estates of such individual and such other individuals above and any trust, partnership or other bona fide estate- planning vehicle the only beneficiaries of which are

any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“**Incremental Amendment**” has the meaning set forth in Section 2.14(f).

“**Incremental Base Amount**” means the greater of (x) \$300,000,000 and (y) an amount equal to 50% of LTM Consolidated EBITDA.

“**Incremental Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Equivalent First Lien Debt**” means the Indebtedness incurred under Section 7.03(q) that is secured by the Collateral on a *pari passu* basis with the Facilities.

“**Incremental Facility**” has the meaning set forth in Section 2.14(a). “**Incremental Facility**

**Closing Date**” has the meaning set forth in Section 2.14(d). “**Incremental Lenders**” has the

meaning set forth in Section 2.14(c). “**Incremental Loan Request**” has the meaning set forth

in Section 2.14(a). “**Incremental Loans**” has the meaning set forth in Section 2.14(b).

“**Incremental Revolving Credit Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Revolving Credit Lender**” has the meaning set forth in Section 2.14(c). “**Incremental**

**Revolving Credit Loan**” has the meaning set forth in Section 2.14(b). “**Incremental Revolving Facility**”

has the meaning set forth in Section 2.14(a). “**Incremental Term Commitments**” has the meaning set

forth in Section 2.14(a). “**Incremental Term Lender**” has the meaning set forth in Section 2.14(c).

“**Incremental Term Loan**” has the meaning set forth in Section 2.14(b).

“**Incurrence-Based Incremental Amount**” has the meaning set forth in Section 2.14(d)(v). “**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(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 (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property (including Financing Lease Obligations) or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation (x) until sixty (60) days after such obligation becomes due and payable or (y) otherwise not treated as a liability on the balance sheet and (iii) accruals for payroll and other liabilities accrued in the ordinary course);

(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 and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

- (f) all Attributable Indebtedness;
- (g) all obligations of such Person in respect of Disqualified Equity Interests;

if and to the extent that any of the foregoing would constitute indebtedness or a liability in accordance with GAAP; *provided* that Indebtedness of any direct or indirect parent of the Lead Borrower appearing on the balance sheet of the Lead Borrower solely by reason of push-down accounting under GAAP shall be excluded; and

(g) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) 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, except to the extent such Person's liability for such Indebtedness is otherwise expressly limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt, (B) in the case of the Lead Borrower and its Restricted Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business, (C) exclude contingent obligations incurred in the ordinary course of business or consistent with industry practice, obligations under or in respect of Non-Financing Lease Obligations, Qualified Securitization Facilities, straight-line leases, operating leases or lease lease-back transactions, (D) exclude obligations under any license, permit or other approval (or guarantees given in respect of such obligations) incurred prior to the Closing Date or in the ordinary course of business or consistent with past practice and (E) exclude (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) accrued expenses and royalties, (v) in connection with the purchase by the Lead Borrower or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner, (vi) any obligations in respect of workers' compensation claims, retirement, post-employment or termination obligations (including pensions and retiree medical care), pension fund obligations or contributions or similar claims, or social security or wage taxes or contributions, (vii) any liability for taxes and (viii) asset retirement obligations and other pension and other post-employment benefit related obligations (including pensions and retiree medical care). The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness (not to exceed the maximum amount of such Indebtedness for which such Person could be liable) and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith. Notwithstanding anything in this definition to the contrary, Indebtedness shall be calculated without giving effect to the effects of Financial Accounting Standards Board Accounting Standards Codification 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“**Indemnified Liabilities**” has the meaning set forth in Section 10.05.

“**Indemnified Taxes**” means, with respect to any Agent or any Lender, all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Borrower or any Guarantor under this Agreement or any other Loan Document, other

than (i) Taxes imposed on or measured by its net income, however denominated, and franchise (and similar) Taxes imposed in lieu of net income Taxes, by a jurisdiction (A) as a result of such Agent's or Lender's being organized in or having its principal office (or, in the case of any Lender, its applicable Lending Office) or permanent establishment in such jurisdiction (or any political subdivision thereof), or

(B) as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising from executing, delivering, being a party to, engaging in any transactions pursuant to,



performing its obligations under, receiving payments under or enforcing, any Loan Document, (ii) Taxes attributable to the failure by such Agent or Lender to deliver the documentation required to be delivered pursuant to Section 3.01(d), (iii) any branch profits Taxes imposed by the United States, or any similar Tax, imposed by any jurisdiction described in clause (i) above, (iv) in the case of any Lender (other than an assignee pursuant to a request by the Lead Borrower under Section 3.07), any U.S. federal withholding Tax that is imposed pursuant to a law in effect on the date such Lender acquires an interest in the applicable Commitment (or, in the case of an applicable interest in a Loan not funded by such Lender pursuant to a prior Commitment, the date such Lender acquired such interest in such Loan), or designates a new Lending Office, except to the extent such Lender (or its assignor, if any) was entitled immediately prior to the time of designation of a new Lending Office (or assignment) to receive additional amounts with respect to such withholding Tax pursuant to Section 3.01, (v) with respect to any Loans made to the Dutch Borrower, any Tax imposed under the laws of the Netherlands (i) pursuant to or in connection with the Dutch Withholding Tax Act 2021 (*Wet bronbelasting 2021*) as a result of any Agent or any Lender being considered affiliated with any Loan Party within the meaning of the Dutch Withholding Tax Act 2021 as published in the Official Gazette (Staatsblad) Stb. 2019, 513 of December 27, 2019, or (ii) or as a result of any Agent or Lender having a (direct or indirect) substantial interest (*aanmerkelijk belang*) in a Loan Party within the meaning of the Dutch Income Tax Act 2001 (*Wet inkomstenbelasting 2001*), and (vi) any withholding Taxes imposed under FATCA. For the avoidance of doubt, the term “Lender” for purposes of this definition shall include each L/C Issuer and Swing Line Lender.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Information**” has the meaning set forth in Section 10.08.

“**Initial Term Loans**” means Initial Term A Loans and the Initial Term B Loans.

“**Initial Term A Commitment**” means, as to each Term A Lender, its obligation to make an Initial Term A Loan in Dollars to the Borrowers pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Term A Lender’s name in Schedule 1.01A under the caption “Initial Term A Commitment” or in the Assignment and Assumption pursuant to which such Term A Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Initial Term A Commitments is \$265,000,000.

“**Initial Term A Loans**” means the term loans made by the Lenders on the Closing Date to the Borrowers pursuant to Section 2.01(a).

“**Initial Term B Commitment**” means, as to each Term B Lender, its obligation to make an Initial Term B Loan in Dollars to the Borrowers pursuant to Section 2.01(b) in an aggregate amount not to exceed the amount set forth opposite such Term B Lender’s name in Schedule 1.01A under the caption “Initial Term B Commitment” or in the Assignment and Assumption pursuant to which such Term B Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Initial Term B Commitments is \$515,000,000.

“**Initial Term B Loans**” means the term loans made by the Lenders on the Closing Date to the Borrowers pursuant to Section 2.01(b).

“**Initial Revolving Borrowing**” means the borrowing of Revolving Credit Loans on the Closing Date. “**Intellectual Property Security Agreements**” has the meaning set forth in the Security Agreement.

“**Intercompany License Agreement**” means any cost-sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, IP Rights transfer agreement or any related agreements, in each case where all the parties to such agreement are one or more of the Lead Borrower and any Restricted Subsidiary thereof.

“**Intercompany Note**” means a promissory note substantially in the form of Exhibit I.

“**Intercreditor Agreements**” means the Closing Date Intercreditor Agreement and the Junior Lien Intercreditor Agreement, collectively, in each case to the extent in effect.

“**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* 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 (including a 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.

“**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, three or six months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, twelve months or a shorter period or, to the extent agreed by the Administrative Agent, one week thereafter, as selected by the applicable Borrower in its Committed Loan Notice; *provided* that:

- (i) any Interest Period that would otherwise end on a day that is not a Business Day shall, subject to clause (iii) below, 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;
- (ii) any Interest Period (other than an Interest Period having a duration of less than one month) 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
- (iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“**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 or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Lead Borrower and its Restricted Subsidiaries, (i) intercompany advances arising from their cash management, tax, and accounting operations, in each case, in the ordinary course of business or consistent with past practice and (ii) intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business or consistent with past practice) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment but less all returns and distributions received on such Investment.

“**Investors**” means (1) Carl C. Icahn and his siblings, his and their respective spouses and descendants (including stepchildren and adopted children) and the spouses of such descendants (including stepchildren and adopted children)

(collectively, the “Family Group”); (2) any trust, estate, partnership, corporation, company, limited liability company or unincorporated association or organization (each an “Entity” and collectively “Entities”) Controlled by one or more members of the Family Group, including without limitation any funds managed by any member of the Family Group that are acting in concert with the Family Group; (3) any Entity over which one or more members of the Family Group, directly or indirectly, have rights that, either legally or in practical effect, enable them to make or veto significant management decisions with respect to such Entity, whether pursuant to the constituent documents of such Entity, by contract, through representation on a board of directors or other governing body of such Entity, through a management position with such Entity or in any other manner (such rights hereinafter referred to as “Veto Power”); (4) the estate of any member of the Family Group; (5) any trust created (in whole or in part) by any one or more members of the Family Group; (6) any individual or Entity who

receives an interest in any estate or trust listed in clauses (4) or (5), to the extent of such interest; (7) any trust or estate, substantially all the beneficiaries of which (other than charitable organizations or foundations) consist of one or more members of the Family Group; (8) any organization described in Section 501(c) of the Code, over which any one or more members of the Family Group and the trusts and estates listed in clauses (4), (5) and (7) have direct or indirect Veto Power, or to which they are substantial contributors (as such term is defined in Section 507 of the Code); (9) any organization described in Section 501(c) of the Code of which a member of the Family Group is an officer, director or trustee; or (10) any Entity, directly or indirectly (a) owned or Controlled by or (b) a majority of the economic interests in which are owned by, or are for or accrue to the benefit of, in either case, any Person or Persons identified in clauses (1) through (9) above. For the purposes of this definition of Investors, (I) “Control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and (II) for the avoidance of doubt, in addition to any other Person or Persons that may be considered to possess Control, (x) a partnership shall be considered Controlled by a general partner or managing general partner thereof, (y) a limited liability company shall be considered Controlled by a managing member of such limited liability company and (z) a trust or estate shall be considered Controlled by any trustee, executor, personal representative, administrator or any other Person or Persons having authority over the control, management or disposition of the income and assets therefrom.

“**IP Rights**” has the meaning set forth in Section 5.15.

“**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).

“**Junior Financing**” has the meaning set forth in Section 7.10(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing. “**Junior Lien**

“**Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit J-2 hereto (which agreement in such form or with immaterial changes thereto the Collateral Agent is authorized to enter into) Agent between the Collateral Agent and one or more collateral agents or representatives for the holders of Indebtedness that is not prohibited under Section 7.03, and is intended to be, secured on a junior Lien basis to the Liens securing the Obligations (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“**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 Pro Rata Share or other applicable share provided for under this Agreement.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the applicable Honor Date or refinanced as a Revolving Credit Borrowing. All L/C Borrowings shall be denominated in Dollars.

“**L/C Commitment**” means, with respect to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit pursuant to Section 2.03, as such commitment is set forth on Schedule 1.01A or if an L/C Issuer has entered into an Assignment and Assumption, the amount set forth for such L/C Issuer as its L/C Commitment in the Register maintained by the Administrative Agent.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“**L/C Disbursement**” means any payment made by an L/C Issuer pursuant to a Letter of Credit. “**L/C**

**Issuer**” means each of (a) Bank of America, (b) Citibank, N.A., (c) Capital One, National

Association, (d) Citizens Bank, N.A., (e) Fifth Third Bank, National Association, (f) KeyBanc Capital Markets Inc., (g) Mizuho Bank, Ltd., (h) MUFG Bank, Ltd., (i) Santander Bank, N.A., (j) Truist Bank, (k) U.S. Bank National

Association, (l) Wells Fargo Bank, National Association, (m) each other Person with a L/C Commitment set forth on Schedule 1.01A and (n) any other Lender that becomes an L/C Issuer in accordance with Sections 2.03(k) or 10.07(k), in each case in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. Each L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate and for all purposes of the Loan Documents. If there is more than one L/C Issuer at any given time, the term L/C Issuer shall refer to the relevant L/C Issuer(s).

“**L/C Obligations**” means, as at any date of determination, the aggregate principal 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 2.03(l). 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 or Rule 36 of UCP 600, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Latest Maturity Date**” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Refinancing Term Loan, any Refinancing Term Commitment, any Extended Term Loan, any Extended Revolving Credit Commitment, any Incremental Term Loans, any Incremental Revolving Credit Commitments or any Other Revolving Credit Commitments, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents, orders, decrees, injunctions 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.

“**Lead Arrangers**” means BofA Securities, Inc., Citibank, N.A., Capital One, National Association, Citizens Bank, N.A., Fifth Third Bank, National Association, HSBC Securities (USA) Inc., KeyBanc Capital Markets Inc., Mizuho Bank, Ltd., MUFG Bank, Ltd., Santander Bank, N.A., Truist Securities, Inc., U.S. Bank National Association and Wells Fargo Securities, LLC.

“**Lender**” has the meaning set forth in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and the Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lender Default**” means (i) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any incurrence of revolving loans or reimbursement obligations required to be made by it, which refusal or failure is not cured within two Business Days after the date of such refusal or failure; (ii) the failure of any Lender to pay over to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless subject to a good faith dispute; (iii) a Lender has notified the Lead Borrower or the Administrative Agent that it does not intend to comply with its funding obligations, or has made a public statement to that effect with respect to its funding obligations, under the Revolving Credit Facility or under other agreements generally in which it commits to extend credit; (iv) a Lender has failed, within three (3) Business Days after request

by the Administrative Agent, to confirm that it will comply with its funding obligations under the Revolving Credit Facility; or (v) a Lender has admitted in writing that it is insolvent or such Lender becomes subject to a Lender- Related Distress Event or a Bail-In Action. Any determination by the Administrative Agent that a Lender Default has occurred under any one or more of clauses (i) through (v) above shall be conclusive and binding absent manifest error, and the applicable Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Lead Borrower, each L/C Issuer, each Swing Line Lender and each Lender.

“**Lender Recipient Party**” has the meaning set forth in Section 9.16.



“**Lender-Related Distress Event**” means, with respect to any Lender or any person that directly or indirectly controls such Lender (each, a “**Distressed Person**”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; *provided* that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any equity interests in any Lender or any person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“**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.

“**Letter of Credit**” means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit and may be issued in any Approved Currency.

“**Letter of Credit Expiration Date**” means the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the applicable Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“**Letter of Credit Issuance Request**” means a letter of credit request substantially in the form of Exhibit B.

“**Letter of Credit Sublimit**” means an amount equal to the lesser of (a) \$300,000,000 and (b) the aggregate principal amount of the Revolving Credit Commitments. 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.

“**Lien**” means any mortgage, pledge, hypothecation, assignment by way of security, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement 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); *provided* that in no event shall a Non-Financing Lease Obligation be deemed to constitute a Lien.

“**Loan**” means an extension of credit by a Lender to the Borrowers under Article 2 in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan (including any Incremental Term Loan and any extensions of credit under any Revolving Commitment Increase).

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) each Intercreditor Agreement to the extent then in effect, (v) each Letter of Credit Issuance Request and (vi) any Refinancing Amendment, Incremental Amendment or Extension Amendment.

“**Loan Parties**” means, collectively, the Borrowers 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.

“**LTM Consolidated EBITDA**” means Consolidated EBITDA for the most recently ended period of four consecutive fiscal quarters ended prior to the date of determination for which financial statements are internally available, calculated on a Pro Forma Basis.

“**Management Stockholders**” means the persons listed as executive officers for purposes of Holdings’ filings with the SEC.

“**Margin Stock**” has the meaning set forth in Regulation U issued by the FRB.

“**Market Capitalization**” means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Lead Borrower (or any direct or indirect parent entity) on the date of the declaration of a Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“**Master Agreement**” has the meaning set forth in the definition of “Swap Contract.”

“**Material Adverse Effect**” means a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of the Lead Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Lead Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or any Agent under any Loan Document.

“**Material Real Property**” means any fee owned Real Property located in the United States that is owned by any Loan Party with a fair market value in excess of \$15,000,000 (at the Closing Date or, with respect to fee owned Real Property acquired after the Closing Date, at the time of acquisition, in each case, as reasonably estimated by the Lead Borrower in good faith).

“**Maturity Date**” means (i) with respect to the Initial Term A Loans, the date that is five years after the Closing Date, (ii) with respect to the Initial Term B Loans, the date that is seven years after the Closing Date, (iii) with respect to the Revolving Credit Commitments, the date that is five years after the Closing Date, (iv) with respect to any tranche of Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date applicable thereto as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (v) with respect to any Refinancing Term Loans or Other Revolving Credit Commitments, the final maturity date applicable thereto as specified in the applicable Refinancing Amendment and (vi) with respect to any Incremental Term Loans or Incremental Revolving Credit Commitments, the final maturity date applicable thereto as specified in the applicable Incremental Amendment; *provided*, in each case, that if such date is not a Business Day, then the applicable Maturity Date shall be the next succeeding Business Day.

“**Maximum Rate**” has the meaning set forth in Section 10.10.

“**MFN Excluded Loans**” means any Incremental Term Loans that are (a) denominated in a different currency as the applicable Incremental Term B Loans, (b) not secured by the Collateral on a *pari passu* basis with the Initial Term B Loans and/or (c) incurred for the purpose of funding a Permitted Acquisition or similar Investment not prohibited hereunder.

“**MFN Protection**” has the meaning set forth in Section 2.14(e)(iii). “**Moody’s**” means

Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage Policies**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Property**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, deeds to secure debt, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent on behalf of the Secured

Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Collateral Agent with such terms and provisions as may be required by the applicable Laws of the relevant jurisdiction, and any other mortgages executed and delivered pursuant to Section 6.11, 6.13 or 6.16, in each case, as the same may from time to time be amended, restated, supplemented, or otherwise modified.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 3(37) or Section 4001(a)(3) of ERISA, to which any Borrower, any Restricted Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six years, has made or been obligated to make contributions.

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Lead Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition (including, for the avoidance of doubt, any Sale and Lease-Back Transaction) or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, consultants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid (and is timely repaid) in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Lead Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) any costs associated with unwinding any related Swap Obligations in connection with such transaction, (v) Taxes (including Tax distributions paid pursuant to Section 7.06(i)(iii)) paid or reasonably estimated to be payable as a result thereof, and (vi) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Lead Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided* that so long as no Event of Default under Sections 8.01(a) or, solely with respect to the Holdings or the Lead Borrower, Section 8.01(f) has occurred and is continuing, the Lead Borrower may reinvest any portion of such proceeds in assets useful for its business (which shall include any Investment permitted by this Agreement) within 15 months of such receipt and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 15 months of such receipt, so reinvested or contractually committed to be so reinvested (it being understood that if any portion of such proceeds are not so used within such 15-month period but within such 15-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within 21 months of initial receipt, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); it being further understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if an Event of Default under Section 8.01(a) or, solely with respect to Holdings and the Lead Borrower, Section 8.01(f) has occurred and is continuing at the time of a proposed reinvestment, unless such proposed reinvestment is made pursuant to a binding commitment entered into at a time when no such Event of Default was continuing; *provided, further*, that (x) the proceeds realized in any single transaction or series of related transactions shall not constitute Net Proceeds unless the amount of such proceeds exceeds \$75,000,000, and



(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Lead Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such incurrence, issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Lead Borrower or any Restricted Subsidiary shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07(d).

“**Non-Debt Fund Affiliate**” means any Affiliate of the Lead Borrower other than (a) Holdings or any Subsidiary of Holdings, (b) any Debt Fund Affiliates and (c) any natural person.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender. “**Non-**

**Expiring Credit Commitment**” has the meaning set forth in Section 2.04(g). “**Non-Extension**

**Notice Date**” has the meaning set forth in Section 2.03(b)(iii).

“**Non-Financing Lease Obligation**” means a lease obligation 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, a straight-line or operating lease shall be considered a Non- Financing Lease Obligation.

“**Not Otherwise Applied**” means, with reference to any amount of proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.05(b), (b) was not previously (and is not concurrently being) applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was or is (or may have been) contingent on receipt of such amount or utilization of such amount for a specified purpose, (c) was not utilized pursuant to Section 8.05, (d) was not applied to incur Indebtedness pursuant to Section 7.03(m)(y), (e) was not utilized to make Restricted Payments pursuant to Section 7.06 (other than pursuant to Section 7.06(h)(y)), (f) was not utilized to make Investments pursuant to Sections 7.02(n), (p), (v), (w) or (z), (g) was not utilized to make prepayments of any Junior Financing pursuant to Section 7.10 (other than Section 7.10(a)(iv)(y)) or (h) was not utilized to increase availability under clause (d) of the definition of Cumulative Credit. The Lead Borrower shall promptly notify the Administrative Agent of any application of such amount as contemplated by (b) above.

“**Note**” means a Term Note, a Revolving Credit Note or a Swing Line Note, as the context may require. “**Obligations**” means

all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any

Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary 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 and (y) obligations of the Lead Borrower or any Restricted Subsidiary arising under any Secured Hedge Agreement, any Treasury Services Obligations or under any Bilateral Letter of Credit Facilities.

Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit fees, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

Notwithstanding the foregoing, the obligations of the Lead Borrower or any Restricted Subsidiary under any Secured Hedge Agreement, any Treasury Services Obligations or any Bilateral Letter of Credit Facilities shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so



long as, the other Obligations are so secured and guaranteed. Notwithstanding the foregoing, Obligations of any Guarantor shall in no event include any Excluded Swap Obligations of such Guarantor.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury. “**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1). “**OID**” means original issue discount.

“**Organizational Documents**” means (a) with respect to any corporation or exempted company, the certificate or articles of incorporation and the bylaws or memorandum and articles of association (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, exempted limited partnership, joint venture, trust or other form of business entity, the partnership, exempted limited partnership, joint venture or other applicable agreement of formation, registration or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation, registration or organization with the applicable Governmental Authority in the jurisdiction of its formation, registration or organization and, if applicable, any certificate or articles of formation, registration or organization of such entity.

“**Other Applicable Indebtedness**” has the meaning set forth in Section 2.05(b)(ii).

“**Other Debt Representative**” means, with respect to any series of Indebtedness permitted to be incurred hereunder on a *pari passu* or junior Lien basis to the Lien securing the Obligations, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Other Rate Early Opt-in**” means the Administrative Agent and the Lead Borrower have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(ii) and paragraph (2) of the definition of “Benchmark Replacement”.

“**Other Revolving Credit Commitments**” means one or more Classes of revolving credit commitments hereunder that result from a Refinancing Amendment.

“**Other Revolving Credit Loans**” means one or more Classes of Revolving Credit Loans that result from a Refinancing Amendment.

“**Other Taxes**” has the meaning set forth in Section 3.01(b).

“**Outstanding Amount**” means (a) with respect to the 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 (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) 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 aggregate outstanding Principal Amount thereof on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Participant” has the meaning set forth in Section 10.07(f).

“**Participant Register**” has the meaning set forth in Section 10.07(f). “**Participating Lender**” has the meaning set forth in Section 2.05(a)(v)(C)(2). “**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “**employee pension benefit plan**” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding six years.

“**Perfection Certificate**” means a certificate in the form of Exhibit H hereto or any other form reasonably approved by the Collateral Agent, as the same shall be supplemented from time to time.

“**Permitted Acquisition**” has the meaning set forth in Section 7.02(i).

“**Permitted Convertible Notes Offering**” means any offering by the Lead Borrower or any of the Restricted Subsidiaries after the Closing Date of unsecured convertible notes or debentures (including by means of being a co-obligor or guarantor of convertible notes or debentures issued by a direct or indirect parent of the Lead Borrower that are convertible or exchangeable solely into Qualified Equity Interests of Holdings); *provided* that such notes or debentures or guarantees are permitted to be incurred herein.

“**Permitted First Priority Refinancing Debt**” means any Permitted First Priority Refinancing Notes and any Permitted First Priority Refinancing Loans.

“**Permitted First Priority Refinancing Loans**” means any Credit Agreement Refinancing Indebtedness in the form of secured loans incurred by the Borrowers and/or the Subsidiary Guarantors in the form of one or more tranches of loans not under this Agreement; *provided* that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Liens securing the Obligations and is not secured by any property or assets of the Lead Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors and (iii) such Indebtedness does not mature on or prior to the date that is the Latest Maturity Date at the time such Indebtedness is incurred or issued or have a shorter Weighted Average Life to Maturity than the Initial Term B Loans (and in any event, shall not mature prior to the Revolving Credit Facility).

“**Permitted First Priority Refinancing Notes**” means any Credit Agreement Refinancing Indebtedness in the form of secured Indebtedness (including any Registered Equivalent Notes) incurred by the Lead Borrower and/or the Subsidiary Guarantors in the form of one or more series of senior secured notes (whether issued in a public offering, Rule 144A, private placement or otherwise); *provided* that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Liens securing the Obligations and is not secured by any property or assets of the Lead Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (iii) such Indebtedness does not mature or have scheduled amortization or payments of principal (other than customary offers to repurchase upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) on or prior to the date that is the Latest Maturity Date at the time such Indebtedness is incurred or issued and (iv) an Other Debt Representative acting on behalf of the holders of such

Indebtedness shall have become party to each Intercreditor Agreement then in effect. Permitted First Priority Refinancing Notes will include any Registered Equivalent Notes issued in exchange therefor.

“**Permitted Holders**” means each of (a) the Investors, (b) the Management Stockholders, (c) any Person who is acting solely as an underwriter in connection with a public or private offering of Equity Interests of Holdings or any of its direct or indirect parent companies, acting in such capacity, (d) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) of which any of the foregoing, any Holding Company, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last

sentence of this definition are members and any member of such group; *provided*, that in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in clauses (a) through (c), collectively, have beneficial ownership of more than 50% of the total voting power of the issued and outstanding Equity Interests of Holdings or any of its direct or indirect parent companies held by such group, (e) any Holding Company and (f) any Permitted Plan.

**“Permitted Intercompany Activities”** means any transactions (A) between or among Holdings, the Lead Borrower and its Restricted Subsidiaries that are entered into in the ordinary course of business of Holdings, the Lead Borrower and its Restricted Subsidiaries and, in the good faith judgment of the Lead Borrower are necessary or advisable in connection with the ownership or operation of the business of the Holdings, Lead Borrower and its Restricted Subsidiaries, including, but not limited to, (i) payroll, cash management, purchasing, insurance and hedging arrangements, (ii) management, technology and licensing arrangements and (iii) customer loyalty and rewards programs or (B) between or among the Lead Borrower, its Restricted Subsidiaries and any Captive Insurance Subsidiaries.

**“Permitted Junior Lien Refinancing Debt”** means Credit Agreement Refinancing Indebtedness constituting secured Indebtedness (including any Registered Equivalent Notes) incurred by the Borrowers and/or the Subsidiary Guarantors in the form of one or more series of junior lien secured notes or junior lien secured loans; *provided* that (i) notwithstanding any provision to the contrary contained in the definition of “Credit Agreement Refinancing Indebtedness,” such Indebtedness is secured by the Collateral on a junior priority basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and is not secured by any property or assets of the Lead Borrower or any Restricted Subsidiary other than the Collateral, (ii) an Other Debt Representative acting on behalf of the holders of such Indebtedness shall have become party to the Junior Lien Intercreditor Agreement as a “Junior Priority Representative” (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement), and (iii) such Indebtedness meets the Permitted Other Debt Conditions. Permitted Junior Lien Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

**“Permitted Other Debt Conditions”** means that such applicable Indebtedness (i) does not mature or have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except customary asset sale or change of control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case on or prior to the Latest Maturity Date at the time such Indebtedness is incurred and (ii) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors.

**“Permitted Plan”** means any employee benefits plan of the Lead Borrower or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

**“Permitted Ratio Debt”** means Indebtedness of the Lead Borrower or any Restricted Subsidiary so long as immediately after giving Pro Forma Effect thereto and to the use of the proceeds thereof (but without netting the proceeds thereof) the Consolidated Fixed Charge Coverage Ratio is no less than 2.00 to 1.00; *provided*, that any such Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party pursuant to Sections 7.03(g) or 7.03(q), does not exceed in the aggregate at any time outstanding the greater of (i) \$250,000,000 and (ii) 42% LTM Consolidated EBITDA, in each case determined at the time of incurrence.

**“Permitted Refinancing”** means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon *plus* other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life

to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to

a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), at the time thereof, no Event of Default shall have occurred and be continuing and (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (ii) such modification, refinancing, refunding, renewal, replacement or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (e) if the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended was subject to an Intercreditor Agreement, the holders of such modified, refinanced, refunded, renewed, replaced or extended Indebtedness (if such Indebtedness is secured) or their representative on their behalf shall become party to the appropriate Intercreditor Agreement(s).

**“Permitted Unsecured Refinancing Debt”** means Credit Agreement Refinancing Indebtedness in the form of unsecured Indebtedness (including any Registered Equivalent Notes) incurred by the Borrowers and/or the Subsidiary Guarantors in the form of one or more series of senior unsecured notes or loans; *provided* that such Indebtedness (i) otherwise satisfies the requirements set forth in the definition of “Credit Agreement Refinancing Indebtedness” and (ii) meets the Permitted Other Debt Conditions. Permitted Unsecured Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

**“Person”** means any natural person, corporation, exempted company, exempted limited partnership, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plan”** means any **“employee benefit plan”** (as such term is defined in Section 3(3) of ERISA, but excluding any Multiemployer Plan) sponsored, maintained or contributed to by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

**“Platform”** has the meaning set forth in Section 6.02.

**“Pledged Debt”** has the meaning set forth in the Security Agreement. **“Pledged**

**Equity”** has the meaning set forth in the Security Agreement.

**“Pledged Intercompany Debt”** has the meaning given to such term in the definition of “Collateral and Guarantee Requirement.”

**“Post-Acquisition Period”** means, with respect to any Permitted Acquisition or the conversion of any Unrestricted Subsidiary into a Restricted Subsidiary, the period beginning on the date such Permitted Acquisition or conversion is consummated and ending on the twenty-four month anniversary of the date on which such Permitted Acquisition or conversion is consummated.

**“Preferred Stock”** means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

**“Principal Amount”** means (i) the stated or principal amount of each Dollar Denominated Loan or Dollar Denominated Letter of Credit or L/C Obligation with respect thereto, as applicable, and (ii) the Dollar Equivalent of the stated

or principal amount of each Foreign Currency Denominated Loan and Foreign Currency Denominated Letter of Credit or L/C Obligation with respect thereto, as the context may require.

“**Pro Forma Adjustment**” means, for any four-quarter period that includes all or any part of a fiscal quarter included in any Post-Acquisition Period, with respect to the Consolidated EBITDA of the Lead Borrower, the *pro forma* increase or decrease in such Consolidated EBITDA, as the case may be, projected by the Lead Borrower in good faith as a result of (a) actions taken during such Post-Acquisition Period for the purposes of realizing reasonably identifiable and factually supportable “run rate” cost savings, operating expense reductions and



synergies or (b) any additional costs incurred during such Post-Acquisition Period, in each case in connection with the combination of the operations of any Person, property, business or asset with the operations of the Lead Borrower and the Restricted Subsidiaries; *provided* that (i) at the election of the Lead Borrower, such Pro Forma Adjustment shall not be required to be determined for any such acquired operations of any Person, property, business or asset to the extent the aggregate consideration paid in connection with such acquisition was less than \$50,000,000, and (ii) so long as such actions are taken during such Post-Acquisition Period or such costs are incurred during such Post-Acquisition Period, as applicable, for purposes of projecting such *pro forma* increase or decrease to such Consolidated EBITDA, as the case may be, it may be assumed that such cost savings will be realizable during the entirety of such four-quarter period, or such additional costs will be accrued or incurred during the entirety of such four-quarter period; *provided, further*, that any such *pro forma* increase or decrease to such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings or additional costs already included in such affiliated Consolidated EBITDA, as the case may be, for such four-quarter period.

**“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect”** mean, with respect to compliance with any test hereunder, that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Disposition of all or substantially all Equity Interests in any Subsidiary of the Lead Borrower or any division, product line, or facility used for operations of the Lead Borrower or any of its Subsidiaries, shall be excluded, and (ii) in the case of a Permitted Acquisition or Investment that is a Specified Transaction, shall be included, (b) any retirement of Indebtedness, and (c) any Indebtedness incurred or assumed by the Lead Borrower or any of the Restricted Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination; *provided* that (I) without limiting the application of the Pro Forma Adjustment pursuant to (A) above, the foregoing *pro forma* adjustments may be applied to any such test solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including operating expense reductions) that are (as determined by the Lead Borrower in good faith) (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Lead Borrower and the Restricted Subsidiaries and (z) factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment; (II) that when calculating the Consolidated First Lien Net Leverage Ratio for purposes of (i) the definition of “Applicable Rate,” (ii) [reserved] and (iii) determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with Section 7.09, the events that occurred subsequent to the end of the applicable four-quarter period shall not be given *pro forma* effect, (III) when calculating the Consolidated First Lien Net Leverage Ratio for purposes of the Applicable ECF Percentage, such percentage shall be calculated giving *pro forma* effect to any prepayment of Excess Cash Flow to be made pursuant to Section 2.05(b)(i) in connection with such calculation and any other Indebtedness prepaid subsequent to the end of the applicable four-quarter period and prior to such date of determination; and (IV) in determining Pro Forma Compliance with the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio, the Consolidated Fixed Charge Coverage Ratio or any other incurrence test (other than in respect of Section 7.09), in connection with the incurrence (including by assumption or guarantee) of any Indebtedness, the incurrence or repayment of any Indebtedness in respect of the Revolving Credit Facility or any other revolving facility immediately prior to or in connection therewith included in the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio, the Consolidated Fixed Charge Coverage Ratio or such other incurrence test calculation immediately prior to, or simultaneously with, the event for which the Pro Forma Compliance determination of such ratio or other test is being made shall be disregarded; *provided, further*, that with respect to any incurrence of Indebtedness permitted by the provisions of this Agreement in reliance on the *pro forma* calculation of the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio, the Consolidated Fixed Charge Coverage Ratio or such other incurrence test calculation, any Indebtedness being incurred (or expected to be incurred) substantially simultaneously or contemporaneously with the incurrence of any such Indebtedness or any applicable transaction or action in reliance on any “basket” set forth in this Agreement (including the Incremental Base Amount and any “baskets”

measured as a percentage of Total Assets or Consolidated EBITDA), including under the Revolving Credit Facility shall be disregarded. In the event any fixed “baskets” are intended to be utilized together with any incurrence-based “baskets” in a single transaction or series of related transactions (including utilization of the Free and Clear Incremental Amount and the Incurrence-Based Incremental Amount), (i) compliance with or satisfaction of any applicable financial ratios or tests for the portion of

Indebtedness or any other applicable transaction or action to be incurred under any incurrence-based “baskets” shall first be calculated without giving effect to amounts being utilized pursuant to any fixed “baskets,” but giving full *pro forma* effect to all applicable and related transactions (including, subject to the foregoing with respect to fixed “baskets,” any incurrence and repayments of Indebtedness) and all other permitted Pro Forma Adjustments (except that the incurrence of any Indebtedness under the Revolving Credit Facility or any other revolving facility immediately prior to or in connection therewith shall be disregarded), and (ii) thereafter, incurrence of the portion of such Indebtedness or other applicable transaction or action to be incurred under any fixed “baskets” shall be calculated.

“**Pro Rata Share**” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Term Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Term Loans under the applicable Facility or Facilities at such time; *provided* that, in the case of the Revolving Credit Facility, if such Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

“**Professional Lender**” shall mean (i) until the publication of an interpretation of “public” as referred to in the CRR by the competent authorities, an entity which (A) assumes rights and/or obligations vis-à-vis the Dutch Borrower, the value of which is at least EUR 100,000 (or its equivalent in another currency), (B) provides repayable funds for an initial amount of at least EUR 100,000 (or its equivalent in another currency) or (C) otherwise qualifies as not forming part of the public and (ii) as soon as the interpretation of the term “public” as referred to in the CRR has been published by the competent authorities, an entity which is not considered to form part of the public on the basis of such interpretation.

“**Projections**” has the meaning set forth in Section 6.01(c).

“**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 set forth in Section 6.02.

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, each Guarantor that, at the time the relevant Guaranty (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or otherwise constitutes an “eligible contract participant” under the Commodity Exchange Act and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into an agreement pursuant to the Commodity Exchange Act.

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests. “**Qualified**

**Proceeds**” means the fair market value of assets that are used or useful in, or Equity Interests of any Person engaged in, a Similar Business.

“**Qualified Securitization Facility**” means any Securitization Facility (a) constituting a securitization financing facility that meets the following conditions: (i) the board of directors or management of Lead Borrower shall have determined

in good faith that such Securitization Facility is in the aggregate economically fair and reasonable to the Lead Borrower, and (ii) all sales and/or contributions of Securitization Assets and related assets to the applicable Securitization Subsidiary are made at fair market value (as determined in good faith by the Lead Borrower) or (b) constituting a receivables or payables financing or factoring facility.

“**Qualifying Lender**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

**“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).

**“Rating Agencies”** means Moody’s and S&P.

**“Real Property”** means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment thereon, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

**“Refinanced Debt”** has the meaning set forth in the definition of “Credit Agreement Refinancing Indebtedness.”

**“Refinancing Amendment”** means an amendment to this Agreement executed by each of (a) the Borrowers, (b) Holdings, (c) the Administrative Agent, (d) each Additional Refinancing Lender and (e) each Lender that agrees to provide any portion of Refinancing Term Loans, Other Revolving Credit Commitments or Other Revolving Credit Loans incurred pursuant thereto, in accordance with Section 2.15.

**“Refinancing Series”** means all Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Credit Commitments or Other Revolving Credit Loans that are established pursuant to the same Refinancing Amendment (or any subsequent Refinancing Amendment to the extent such Refinancing Amendment expressly provides that the Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Credit Commitments or Other Revolving Credit Loans provided for therein are intended to be a part of any previously established Refinancing Series) and that provide for the same Effective Yield and, in the case of Refinancing Term Loans or Refinancing Term Commitments, amortization schedule.

**“Refinancing Term Commitments”** means one or more Classes of Term Commitments hereunder that are established to fund Refinancing Term Loans of the applicable Refinancing Series hereunder pursuant to a Refinancing Amendment.

**“Refinancing Term Loans”** means one or more Classes of Term Loans hereunder that result from a Refinancing Amendment.

**“Register”** has the meaning set forth in Section 10.07(d).

**“Registered Equivalent Notes”** means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

**“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through the Environment.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“**Relevant Rate**” means, with respect to any Loan denominated in (a) Euros, the EURIBOR Rate and (b) Canadian Dollars, the CDOR Rate.

**“Reportable Event”** means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Pension Plan, other than events for which the thirty (30) day notice period has been waived.

**“Repricing Transaction”** means the prepayment, refinancing, substitution or replacement of all or a portion of the Initial Term Loans incurred on the Closing Date with the incurrence by the Borrowers or any Restricted Subsidiary of any broadly syndicated term loan financing having an All-In Yield that is less than the All- In Yield (as determined by the Administrative Agent on the same basis) of such Initial Term Loans so repaid, refinanced, substituted or replaced, including without limitation, as may be effected through any amendment, amendment or restatement or other modifications to this Agreement relating to the interest rate for, or weighted average yield of, such Term Loans or the incurrence of any Incremental Term Loans or Refinancing Term Loans, in each case the primary purpose of which was to reduce such All-In Yield and other than in connection with a Change of Control or Transformative Acquisition.

**“Request for Credit Extension”** means (a) with respect to a Borrowing, continuation or conversion of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Issuance Request, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

**“Required Financial Covenant Lenders”** means, on any date of determination, Lenders having more than 50% of the sum of (i) the outstanding Loans under the Revolving Credit Facility, (ii) the outstanding Term A Loans and (iii) the unused Commitments under the Revolving Credit Facility; *provided* that the unused Commitments of, and the portion of the outstanding Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Financial Covenant Lenders; *provided, further*, that, to the same extent set forth in Section 10.07(n) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Financial Covenant Lenders.

**“Required Class Lenders”** means, with respect to any Class on any date of determination, Lenders having more than 50% of the sum of (i) the outstanding Loans under such Class and (ii) the aggregate unused Commitments under such Facility; *provided* that the unused Commitments of, and the portion of the outstanding Loans under such Class held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Class Lenders; *provided, further*, that, to the same extent set forth in Section 10.07(n) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Class Lenders.

**“Required Facility Lenders”** means, as of any date of determination, with respect to any Facility, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans, as applicable, under such Facility being deemed **“held”** by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders; *provided, further*, that, to the same extent set forth in Section 10.07(n) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Facility Lenders.

**“Required Lenders”** means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed **“held”** by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Commitments in respect of Revolving Credit Loans; *provided* that the unused Term

Commitment and unused Commitments in respect of Revolving Credit Loans 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; *provided, further,* that, to the same extent set forth in Section 10.07(n) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Lenders.



**“Required Revolving Credit Lenders”** means, as of any date of determination, Revolving Credit Lenders having more than 50% of the sum of the (a) Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Commitments in respect of Revolving Credit Loans; *provided* that such unused Commitment of, and the portion of the Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

**“Rescindable Amount”** has the meaning set forth in Section 2.12(c)(i).

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Responsible Officer”** means the chief executive officer, director, president, vice president, chief financial officer, chief legal officer, treasurer, assistant treasurer, controller or assistant controller or other similar officer of a Loan Party or designee of a Responsible Officer and in the case of a limited partnership or an exempted limited partnership, any officer or director of the general partner or ultimate general partner, as the case may be, and, as to any document delivered on the Closing Date, any secretary or assistant secretary of such Loan Party and any officer or employee of the applicable Loan Party whose signature is included on an incumbency certificate or similar certificate reasonably satisfactory to 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, limited liability company, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of the Lead Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Lead Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

**“Restricted Subsidiary”** means any Subsidiary of the Lead Borrower other than an Unrestricted Subsidiary.

**“Revaluation Date”** means (a) with respect to any Loan denominated in an Approved Currency, each of the following: (i) each date of a Borrowing of such Loan, (ii) each date of a continuation of such Loan pursuant to the terms of this Agreement, (iii) the last day of each fiscal quarter of the Lead Borrower and (iv) in the case of a Revolving Credit Loan, the date of any voluntary reduction of a Commitment in respect thereof pursuant to Section 2.06(a); (b) with respect to any Letter of Credit denominated in an Approved Currency, each of the following: (i) each date of issuance of such Letter of Credit, (ii) each date of any amendment of such Letter of Credit that would have the effect of increasing the face amount thereof and (iii) the last day of each fiscal quarter; (c) such additional dates as the Administrative Agent or the respective L/C Issuer shall determine, or the Required Revolving Credit Lenders shall require, at any time when (i) an Event of Default has occurred and is continuing or (ii) to the extent that, and for so long as, the aggregate Revolving Credit Exposure of all Revolving Credit Lenders (for such purpose, using the Dollar Equivalent in effect for the most recent Revaluation Date) exceeds 90% of the aggregate principal amount of the Commitments in respect of Revolving Credit Loans; and (d) the last day of each fiscal quarter.

**“Revolver Extension Request”** has the meaning set forth in Section 2.16(b). **“Revolver**

**Extension Series”** has the meaning set forth in Section 2.16(b). **“Revolving Commitment**

**Increase”** has the meaning set forth in Section 2.14(a).



**“Revolving Credit Borrowing”** means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type, in the same Approved Currency, and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders under Section 2.01(b) of this Agreement.

**“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 in respect of Letters of Credit 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 1.01A under the caption “Revolving Credit Commitments” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The aggregate Revolving Credit Commitments of all Revolving Credit Lenders shall be \$550,000,000, on the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

**“Revolving Credit Exposure”** means, as to each Revolving Credit Lender, the sum of the amount of the outstanding Principal Amount of such Revolving Credit Lender’s Revolving Credit Loans and its Pro Rata Share or other applicable share provided for under this Agreement of the amount of the L/C Obligations and the Swing Line Obligations at such time.

**“Revolving Credit Facility”** means, at any time, the aggregate amount of the Revolving Credit Commitments at such time.

**“Revolving Credit Lender”** means, at any time, any Lender that has a Commitment in respect of Revolving Credit Loans at such time, including Revolving Credit Commitment, Incremental Revolving Credit Commitment, Extended Revolving Credit Commitment of a given Extension Series and Other Revolving Credit Commitment of a given Refinancing Series, or, if such Commitments have terminated, Revolving Credit Exposure.

**“Revolving Credit Loans”** means any Revolving Credit Loan made pursuant to Section 2.01(b), Incremental Revolving Credit Loans, Other Revolving Credit Loans or Extended Revolving Credit Loans, as the context may require.

**“Revolving Credit Note”** means a promissory note of a Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit D-3 hereto, evidencing the aggregate Indebtedness of the applicable Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender to such Borrower.

**“S&P”** means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, and any successor thereto.

**“Sale and Lease-Back Transaction”** means any arrangement providing for the leasing (or similar arrangement) by the Lead Borrower or any of its Restricted Subsidiaries of any Real Property or tangible personal property, which property has been or is to be sold or transferred by the Lead Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing (or similar arrangement).

**“Same Day Funds”** means immediately available funds.

**“Sanctions”** means any international economic sanctions administered or enforced by the United States government (including without limitation, OFAC), the United Nations Security Council, the European Union or Her Majesty’s Treasury.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Secured Hedge Agreement**” means any Swap Contract that is entered into by and between the Lead Borrower or any Restricted Subsidiary and any Approved Counterparty (unless otherwise designated in writing by

the Lead Borrower and the applicable Approved Counterparty to the Administrative Agent as unsecured) (which notice may designate all Swap Contracts under a specified Master Agreement as unsecured).

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the L/C Issuers, the Swing Line Lender, any Approved Counterparty party to a Secured Hedge Agreement or Treasury Services Obligations, the Bilateral Letter of Credit Facility Banks, the Supplemental Agents and each co-agent or sub-agent appointed by the Administrative Agent or Collateral Agent from time to time pursuant to Section 9.02.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means the accounts receivable, royalty or other revenue streams and other rights to payment, other assets customarily included in a Securitization Facility that are related to any of the foregoing and any other assets subject to a Qualified Securitization Facility and the proceeds thereof.

“**Securitization Facility**” means any of one or more receivables, factoring or securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Lead Borrower or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) pursuant to which the Lead Borrower or any of its Restricted Subsidiaries sells or grants a security interest in its accounts receivable, payables or Securitization Assets or assets related thereto to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable, payable or Securitization Assets or assets related thereto to a Person that is not a Restricted Subsidiary.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“**Securitization Subsidiary**” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

“**Security Agreement**” means the Security Agreement substantially in the form of Exhibit G-1, dated as of the Closing Date, among Holdings, the Lead Borrower, certain Subsidiaries of the Lead Borrower (other than, for the avoidance of doubt, the Dutch Borrower) and the Collateral Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“**Security Agreement Supplement**” has the meaning set forth in the Security Agreement.

“**Senior Secured Notes**” means the senior secured notes due 2029 in an aggregate principal amount of \$520,000,000 issued on October 15, 2021 pursuant to the Senior Secured Notes Indenture.

“**Senior Secured Notes Documents**” means the Senior Secured Notes Indenture and the other transaction documents referred to therein to the extent related to the Senior Secured Notes (including the related guarantee, security agreements, the notes and the notes purchase agreement).

“**Senior Secured Notes Indenture**” means the indenture for the Senior Secured Notes, dated as of October 15, 2021 among the Lead Borrower, as issuer, the CSLS Borrower, as co-issuer, the guarantors listed therein and the trustee referred to therein pursuant to which the Senior Secured Notes are issued, as such indenture may be amended or supplemented from time to time.

“**Similar Business**” means (1) any business conducted or proposed to be conducted by the Lead Borrower or any of its Restricted Subsidiaries on the Closing Date, and any reasonable extension thereof, or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the businesses in which the Lead Borrower and its Restricted Subsidiaries are engaged or propose to be engaged on the Closing Date.

“**SOFR Early Opt-in**” means the Administrative Agent and the Lead Borrower have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of “Benchmark Replacement”.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1). “**Solicited**

**Discounted Prepayment Notice**” means a written notice of the Borrowers of Solicited

Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D)(1) substantially in the form of Exhibit L-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit L-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning set forth in Section 10.07(i).

“**Specified Discount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(B). “**Specified Discount**

**Prepayment Notice**” means a written notice of the Borrowers of a Borrower Offer of

Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit L-8.

“**Specified Discount Prepayment Response**” means the irrevocable written response by each Lender, substantially in the form of Exhibit L-9, to a Specified Discount Prepayment Notice.

“**Specified Discount Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(B). “**Specified**

**Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“**Specified Equity Contribution**” means any cash contribution to the common equity of the Lead Borrower and/or any purchase or investment in an Equity Interests of the Lead Borrower other than Disqualified Equity Interests.

“**Specified Guarantor**” means any Guarantor that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 11.12).



“**Specified Representations**” means those representations and warranties made by the Borrowers and the Guarantors in Sections 5.01(a) (in respect of the Borrowers and the Guarantors only), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.04, 5.12, 5.16, 5.18(a)(ii), 5.18(c) and 5.19(a).

“**Specified Transaction**” has the meaning set forth in Section 1.02(h).

“**Spot Rate**” means, for any currency, 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 (2) 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; *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 Approved Currency.

“**Submitted Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Submitted Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Subsidiary**” of a Person means a corporation, exempted company, partnership, exempted limited partnership, joint venture, limited liability company or other business entity of which (i) 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, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Lead Borrower. For the avoidance of doubt, unless otherwise specified, any entity that is owned at a 50.0% or less level (as described above) shall not be a “Subsidiary” for any purpose under this Agreement, regardless of whether such entity is consolidated on the Lead Borrower’s or any Restricted Subsidiary’s financial statements. For all purposes under this Agreement and the other Loan Documents, no pooled investment vehicle, investment company (or series thereof), collective investment scheme, investment fund, managed account or société d’investissement à capital variable for collective investment by bona fide third parties for which and for so long as the Lead Borrower or any of its Subsidiaries or Affiliates serves as general partner, managing member, investment manager, investment adviser or sub-adviser or sponsor, as applicable, shall be considered a “Subsidiary” for any purpose under this Agreement, regardless of whether such entity is consolidated on the Lead Borrower’s or any Subsidiary’s financial statements.

“**Subsidiary Guarantor**” means, collectively, the Subsidiaries of the Lead Borrower that are Guarantors (other than, for the avoidance of doubt, the Dutch Borrower).

“**Successor Borrower**” has the meaning set forth in Section 7.04(d).

“**Successor Rate**” has the meaning set forth in Section 3.03(d).

“**Supplemental Agent**” has the meaning set forth in Section 9.14(a) and “**Supplemental Agents**” shall have the corresponding meaning.

“**Swap**” means, any agreement, contract, or transaction that constitutes a “**swap**” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**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 Obligation**” means, with respect to any Person, any obligation to pay or perform under any Swap Contract.

“**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 Facility**” means the swing line loan facility made available by the Swing Line Lenders 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 set forth in Section 2.04(a).

“**Swing Line Loan Notice**” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit C 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 Note**” means a promissory note of the Lead Borrower payable to the Swing Line Lender or its registered assigns, in substantially the form of Exhibit D-4 hereto, evidencing the aggregate Indebtedness of the Lead Borrower to the Swing Line Lender resulting from the Swing Line Loans.

“**Swing Line Obligations**” means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding.

“**Swing Line Sublimit**” means an amount equal to the lesser of (a) \$50,000,000 and (b) the aggregate principal amount of the Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“**TARGET Day**” means any day on which 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, is open for the settlement of payments in euro.

“**Tax Group**” has the meaning set forth in Section 7.06(i)(iii). “**Taxes**”

has the meaning set forth in Section 3.01(a).

“**Term A Borrowing**” means any Term Borrowing comprised of Term A Loans.

**“Term A Commitment”** means, as to each Term A Lender, its obligation to make a Term A Loan to a U.S. Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term A Loan to be made by such Term A Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term A Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension.

**“Term A Facility”** means the Term A Commitments and the Term A Loans made hereunder.

**“Term A Lender”** means, at any time, any Lender that has an Initial Term A Commitment, a Term A Commitment or a Term A Loan at such time.

**“Term A Loan”** means any Initial Term A Loan or any Incremental Term Loan, Refinancing Term Loan or Extended Term Loan designated as a “Term A Loan,” as the context may require.

**“Term A Note”** means a promissory note of the Lead Borrower payable to any Term A Lender or its registered assigns, in substantially the form of Exhibit D-1 hereto, evidencing the aggregate Indebtedness of the Lead Borrower to such Term A Lender resulting from the Term A Loans of the applicable Class made by such Term A Lender.

**“Term B Borrowing”** means any Term Borrowing comprised of Term B Loans.

**“Term B Commitment”** means, as to each Term B Lender, its obligation to make a Term B Loan to a U.S. Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term B Loan to be made by such Term B Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term B Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension.

**“Term B Facility”** means the Term B Commitments and the Term B Loans made hereunder.

**“Term B Lender”** means, at any time, any Lender that has an Initial Term B Commitment, a Term B Commitment or a Term B Loan at such time.

**“Term B Loan”** means any Initial Term B Loan or any Incremental Term Loan, Refinancing Term Loan or Extended Term Loan designated as a “Term B Loan,” as the context may require.

**“Term B Loan Standstill Period”** has the meaning provided in Section 8.01(b).

**“Term B Note”** means a promissory note of the Lead Borrower payable to any Term B Lender or its registered assigns, in substantially the form of Exhibit D-2 hereto, evidencing the aggregate Indebtedness of the Lead Borrower to such Term B Lender resulting from the Term B Loans of the applicable Class made by such Term B Lender.

**“Term Borrowing”** means a borrowing consisting of simultaneous Term Loans of the same Class and Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term A Lenders pursuant to Section 2.01(a) or the Term B Lenders pursuant to Section 2.01(b), an Incremental Amendment, a Refinancing Amendment or an Extension.

**“Term Commitment”** means, collectively, the Term A Commitments and the Term B Commitments. **“Term Facilities”** means the Term A Facility and the Term B Facility.

“**Term Lender**” means, at any time, any Term A Lender or any Term B Lender at such time.

“**Term Loan Extension Request**” has the meaning set forth in Section 2.16(a). “**Term Loan Extension Series**” has the meaning set forth in Section 2.16(a). “**Term Loan Increase**” has the meaning set forth in Section 2.14(a).

“**Term Loans**” means any Initial Term A Loan, any Initial Term B Loan or any Incremental Term Loan, Refinancing Term Loan or Extended Term Loan designated as a “Term Loan,” as the context may require.

“**Term Note**” means a Term A Note or a Term B Note, as applicable.

“**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.

“**Test Period**” means, for any date of determination under this Agreement, the latest four consecutive fiscal quarters of the Lead Borrower for which financial statements have been delivered to the Administrative Agent on or prior to the Closing Date and/or for which financial statements are required to be delivered pursuant to Section 6.01, as applicable.

“**Threshold Amount**” means \$100,000,000.

“**Total Assets**” means the total assets of the Lead Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of Holdings delivered pursuant to Sections 6.01(a) or (b) or, for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the most recent balance sheet of Holdings filed with the SEC prior to the Closing Date.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations. “**Transaction Expenses**” means any fees or expenses incurred or paid by the Investors, the Lead Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with hedging transactions related to the Facilities, any OID or upfront fees, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options), this Agreement, the other Loan Documents, the Senior Secured Notes Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the funding of the Initial Term Loans and any Initial Revolving Borrowing on the Closing Date and the execution and delivery of the Loan Documents entered into on the Closing Date, (b) the issuance of the Senior Secured Notes, (c) the consummation of the Closing Date Refinancing, (d) the payment of Transaction Expenses and (e) the consummation of any other transaction in connection with the foregoing.

“**Transformative Acquisition**” means any acquisition or Investment by the Lead Borrower or any Restricted Subsidiary that either (a) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment or (b) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment, would not provide the Lead Borrower and its Restricted Subsidiaries with adequate flexibility under

this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Lead Borrower acting in good faith.

“**Treasury Services Obligations**” means obligations owed by the Lead Borrower or any Restricted Subsidiary to any Approved Counterparty in respect of (x) treasury management services (including controlled disbursements, zero balance arrangements, cash sweeps, pooling arrangements, corporate credit card, purchase card and other card services (including commercial (or purchasing) card programs), automated clearinghouse



transactions, return items, overdrafts, temporary advances, interest and fees and interstate depository network services) or (y) short-term loans or lines of credit not exceeding \$10,000,000 in the aggregate, in each case provided to the Lead Borrower or any Restricted Subsidiary.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan. “**UK**

“**Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unaudited Financial Statements**” means the unaudited consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of June 30, 2021 and the related consolidated statements of income and cash flows for the fiscal quarter ending June 30, 2021.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America. “**Unreimbursed**

**Amount**” has the meaning set forth in Section 2.03(c)(i).

“**Unrestricted Subsidiary**” means (i) as of the Closing Date, each Subsidiary of the Lead Borrower listed on Schedule 1.01C, (ii) any Subsidiary of the Lead Borrower designated by the Lead Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and (iii) any Subsidiary of an Unrestricted Subsidiary.

“**U.S. GAAP**” has the meaning set forth in the definition of “GAAP”.

“**USA PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as amended or modified from time to time.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that, for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being extended, replaced, refunded, refinanced, renewed or defeased, the effect of any amortization or prepayment prior to the date of the applicable extension, replacement, refunding, refinancing, renewal or defeasance shall be disregarded.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

**“Write-Down and Conversion Powers”** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In

Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“**Yield Differential**” has the meaning set forth in Section 2.14(e)(iii).

Section 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 meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The term “including” is by way of example and not limitation.

(e) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) 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.”

(g) 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.

(h) For purposes of (i) determining compliance with any provision of the Loan Documents which requires the calculation of financial ratios or measures (including the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio or the Consolidated Fixed Charge Coverage Ratio), (ii) determining compliance with representations, warranties, defaults or events of default or (iii) testing availability under baskets set forth in the Loan Documents (including baskets measured as a percentage of total assets or Consolidated EBITDA), in each case in a connection with a specified transaction or event (each, a “**Specified Transaction**”), at the option of the Lead Borrower, such determination may be made (1) at the time the definitive agreement with respect to such Specified Transaction has been signed, (2) at the time such Specified Transaction is consummated or (3) at the time an irrevocable notice of repayment of Indebtedness is issued in

connection with such Specified Transaction. If the Lead Borrower has elected to exercise such option in connection with any Specified Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to the incurrence of Indebtedness or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Lead Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary on or following the relevant date of determination and prior to the earlier of the date on which such Specified Transaction is consummated or the definitive agreement or notice for, or, as applicable the offer in respect of a Public Offer for, such Specified Transaction is terminated or expires without consummation of such Specified Transaction, any such ratio or basket shall be tested by calculating the availability under

such ratio or basket on a Pro Forma Basis assuming such Specified Transaction and other transactions in connection therewith have been consummated (including any incurrence of Indebtedness and any associated Lien and the use of proceeds thereof; *provided* that Consolidated Interest Expense for purposes of the Consolidated Fixed Charge Coverage Ratio will be calculated using an assumed interest rate based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Lead Borrower in good faith). Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Lead Borrower or its Restricted Subsidiaries (x) incurs Indebtedness, creates Liens, makes Investments, makes Restricted Payments, designates any Unrestricted Subsidiary or repays any Indebtedness in connection with any Specified Transaction under a ratio-based basket and (y) incurs Indebtedness, creates Liens, makes Investments, makes Restricted Payments, designates any Unrestricted Subsidiary or repays any Indebtedness in connection with such Specified Transaction under a non-ratio-based basket (which shall occur within five Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such Specified Transaction.

(i) For purposes of determining whether the Lead Borrower and its Restricted Subsidiaries comply with any exception to Article 7 (other than the Financial Covenant) where compliance with any such exception is based on a financial ratio or metric being satisfied as of a particular point in time, it is understood that (a) compliance shall be measured at the time when the relevant event is undertaken, as such financial ratios and metrics are intended to be “incurrence” tests and not “maintenance” tests and (b) correspondingly, any such ratio and metric shall only prohibit the Lead Borrower and its Restricted Subsidiaries from creating, incurring, assuming, suffering to exist or making, as the case may be, any new, for example, Liens, Indebtedness or Investments, but shall not result in any previously permitted, for example, Liens, Indebtedness or Investments ceasing to be permitted hereunder.

(j) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

#### Section 1.03. *Accounting Terms.*

(a) 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.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs, the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio shall be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis.

(c) In the event that the Lead Borrower elects to change the accounting method in which it will prepare its financial statements in accordance with GAAP and such election results in a change in the method of calculation of financial covenants, standards or terms (collectively, the “**GAAP Accounting Changes**”) in this Agreement, the Lead Borrower and the Administrative Agent agree to enter into good faith negotiations in order to amend such provisions of this Agreement (including the levels applicable herein to any computation of the Consolidated Total Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio) so as to reflect equitably the GAAP Accounting Changes

with the desired result that the criteria for evaluating the Lead Borrower's financial condition shall be substantially the same after such change as if such change had not been made. Until such time as such an amendment shall have been executed and delivered by the Lead Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms

in this Agreement shall continue to be calculated or construed in accordance with the previous accounting method (as determined in good faith by a Responsible Officer of the Lead Borrower) (it being agreed that the reconciliation between U.S. GAAP and IFRS used in such determination shall be made available to Lenders) as if such change had not occurred. For the avoidance of doubt, solely making an election (without any other action) will not (1) be treated as an incurrence of Indebtedness and (2) have the effect of rendering invalid any Restricted Payment or Investment, the incurrence of any Indebtedness or Liens, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary made prior to the date of such election conditioned on the Lead Borrower and the Restricted Subsidiaries having been able to satisfy any Consolidated Total Net Leverage Ratio, Consolidated First Lien Net Leverage Ratio, Consolidated Fixed Charge Coverage Ratio or any other test or action that was previously valid under this Agreement on the date made, incurred or taken and prior to such election, as the case may be.

Section 1.04. *Rounding.* Any financial ratios required to be maintained by the Lead Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

Section 1.05. *References to Agreements, Laws, Etc.* Unless otherwise expressly provided herein, (a) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. *Timing of Payment or Performance.* When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08. *Cumulative Credit Transactions.* If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09. *Additional Approved Currencies.*

(a) The Borrowers may from time to time request that Eurocurrency Rate Revolving Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Approved Currency"; *provided* that such requested currency is a lawful currency (other than Dollars) that is readily transferable and readily convertible into Dollars in the London interbank market. Such request shall be subject to the approval of the Administrative

Agent and the Revolving Credit Lenders; and, in the case of any such request with respect to the issuance of Letters of Credit, such request shall also be subject to the approval of the applicable L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m. (New York time), five (5) Business Days prior to the date of the desired Borrowing or issuance of a Letter of Credit (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Revolving Loans, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall also promptly notify the applicable L/C Issuer thereof. Each Revolving Credit Lender and the applicable L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00



a.m. (New York time), two (2) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Revolving Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Credit Lender or an L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving Credit Lender or L/C Issuer, as the case may be, to permit Eurocurrency Rate Revolving Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving Credit Lenders consent to making Eurocurrency Rate Revolving Loans in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be an Approved Currency hereunder for purposes of any Borrowing of Eurocurrency Rate Revolving Loans; and if the applicable L/C Issuer also consents to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be an Approved Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.09, the Administrative Agent shall promptly so notify the Borrowers.

Section 1.10. *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 with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Benchmark Replacement or Successor Rate) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes or Conforming Changes.

## ARTICLE 2

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### Section 2.01. *The Loans.*

(a) *The Initial Term A Loan Borrowings.* Subject to the terms and conditions set forth herein, each Term A Lender severally agrees to make to the Lead Borrower and the CSLS Borrower on the Closing Date loans denominated in Dollars in an aggregate principal amount not to exceed the amount of such Term A Lender’s Initial A Term Commitment. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Initial Term A Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) *The Initial Term B Loan Borrowings.* Subject to the terms and conditions set forth herein, each Term B Lender severally agrees to make to the Lead Borrower and the CSLS Borrower on the Closing Date loans denominated in Dollars in an aggregate principal amount not to exceed the amount of such Term B Lender’s Initial Term B Commitment. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Initial Term B Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(c) *The Revolving Credit Borrowings.* Subject to the terms and conditions set forth herein each Revolving Credit Lender severally agrees to make revolving credit loans denominated in an Approved Currency to the Lead Borrower, the CSLS Borrower and the Dutch Borrower from its applicable Lending Office (each such loan, a “**Revolving Credit Loan**”) from time to time as elected by the applicable Borrower pursuant to Section 2.02, on any Business Day during the period from the Closing Date until the Maturity Date with respect to such Revolving Credit Lender’s applicable Revolving Credit Commitment, in an aggregate Principal Amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment at such time; *provided* that after giving effect to any Revolving Credit Borrowing, the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, *plus* such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, *plus* such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender’s

Revolving Credit Commitment. Within the limits of each Lender's Revolving Credit Commitments, 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 denominated in Dollars may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 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 the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 1:00 p.m. (New York City time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (ii) 11:00 a.m. (New York City time) on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause

(i) above may be delivered (I) in the case of Term Borrowings denominated in Dollars, no later than two (2) Business Days prior to the Closing Date and (II) in the case of Revolving Credit Borrowings, no later than two (2) Business Days prior to the Closing Date, in each case, for initial Credit Extensions denominated in Dollars. Each telephonic notice by the Borrowers 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. Except as provided in Section 2.14(a), each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount (A) if such Eurocurrency Rate Loan is denominated in Dollars, \$5,000,000, or a whole multiple of \$1,000,000 in excess thereof, (B) if such Eurocurrency Rate Loan is denominated in Canadian Dollars, C\$5,000,000 or a whole multiple of C\$1,000,000 in excess thereof, and (C) if such Eurocurrency Rate Loan is denominated in euros, €5,000,000, or a whole multiple of

€1,000,000 in excess thereof. Except as provided in Sections 2.03(c), 2.04(c), 2.14(a), each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the applicable Borrower is requesting a Term Borrowing of a particular Class (including a Term A Borrowing or a Term B Borrowing), a Revolving Credit Borrowing, a conversion of Term Loans of any Class (including a conversion of Term A Loans or Term B 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 of a Class or Revolving Credit Loans are to be converted, (v) in the case of a Term Loan, whether such Term Loan is to be denominated in Dollars or euros, (vi) in the case of a Revolving Credit Borrowing, the relevant Approved Currency in which such Revolving Credit Borrowing is to be denominated and (vii) if applicable, the duration of the Interest Period with respect thereto. If the applicable Borrower fails to specify an Approved Currency of a Loan in a Committed Loan Notice, such Loan shall be made in Dollars. If the applicable Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails 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 (x) in the case of any Loan denominated in Dollars, Base Rate Loans or (y) in the case of any Loan denominated in an Approved Foreign Currency, Eurocurrency Rate Loans in the Approved Currency having an Interest Period of one month, as applicable. Any such automatic conversion to Base Rate Loans or one-month Eurocurrency 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 applicable Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. No Loan may be converted into or continued as a Loan denominated in another Approved Currency, but instead must be prepaid in the original Approved Currency or reborrowed in another Approved Currency.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount (and Approved Currency) of its Pro Rata Share or other applicable share provided for under this Agreement of the

applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than (i) 1:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Loan Notice for any Borrowing of Eurocurrency Rate Loans denominated in Dollars, (ii) the Applicable Time specified by the Administrative Agent on the Business Day specified in the applicable Committed Loan Notice for any Borrowing of Eurocurrency Rate Loans denominated in an Approved Foreign Currency and (iii) 1:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Loan

Notice for any Borrowing of Base Rate Loans. The Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the applicable Borrower.

(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 unless the applicable Borrower pays the amount due, if any, under Section 3.05 in connection therewith.

(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. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in the prime rate used in determining the Base Rate promptly following the announcement of such change.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to the other, and all continuations of Term Loans or Revolving Credit Loans as the same Type, there shall not be more than twelve (12) Interest Periods in effect; provided that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Each Lender may, at its option, make any Loan available to any Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of such Borrower to repay such Loan in accordance with the terms of this Agreement.

### Section 2.03. *Letters of Credit.*

#### (a) *The Letter of Credit Commitment.*

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date to issue Letters of Credit at sight denominated in any Approved Currency for the account of the Lead Borrower or any Restricted Subsidiary of the Lead Borrower and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drafts under the Letters of Credit and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Lender's Revolving Credit Commitment, (y) the Outstanding Amount of the L/C Obligations in respect of Letters of Credit issued by such L/C Issuer would exceed such L/C Issuer's L/C Commitment or (z) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. 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 be issued hereunder in the name of the applicable Borrower for the benefit of the applicable Borrower or Subsidiary of the

applicable Borrower in whose name such Existing Letter of Credit is outstanding immediately prior to the Closing Date and shall constitute Letters of Credit subject to the terms hereof.

(ii) An L/C Issuer shall be under no 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 such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii) and Section 2.03(a)(ii)(C), the expiry date of such requested Letter of Credit would occur later than the earlier of (x) twelve months after the date of issuance or last renewal or (y) the fifth Business Day prior to the Maturity Date of the Revolving Credit Facility, unless (1) each Appropriate Lender has approved of such expiration date or (2) the L/C Issuer thereof has approved of such expiration date and the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or backstopped pursuant to arrangements reasonably satisfactory to such L/C Issuer;

(C) 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;

(D) the issuance of such Letter of Credit would violate any Laws binding upon such L/C Issuer;

(E) 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 or type; or

(F) any Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the applicable Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(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 such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such 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.

(iv) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 9 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and any Letter of Credit Issuance Request (and any other document, agreement or instrument entered into by such L/C Issuer and the applicable Borrower or in favor of such L/C Issuer) pertaining

to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article 9 included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to each L/C Issuer.

(v) A Borrower may, at any time and from time to time, reduce the L/C Commitment of any L/C Issuer with the consent of such L/C Issuer; *provided* that the applicable Borrower shall not reduce the L/C Commitment of any L/C Issuer if, after giving effect to such reduction, the conditions set forth in clause (i) above would not be satisfied.



(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 a Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Issuance Request, appropriately completed and signed by a Responsible Officer of the applicable Borrower or his/her delegate or designee. Such Letter of Credit Issuance Request must be received by the relevant L/C Issuer and the Administrative Agent not later than 1:00 p.m. (New York City time) (I) in the case of Letters of Credit issued in Dollars, at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be and (II) in the case of Letters of Credit issued in a currency other than Dollars, at least five (5) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such other date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Issuance Request shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (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 relevant Approved Currency in which such Letter of Credit is to be denominated; and (H) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Issuance Request shall specify in form and detail reasonably satisfactory to the relevant 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 relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Issuance Request, the relevant 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 Issuance Request from the applicable Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or, if applicable, the Restricted Subsidiary, or enter into the applicable amendment, as the case may be. 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 relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share provided for under this Agreement times the amount of such Letter of Credit.

(iii) If a Borrower so requests in any applicable Letter of Credit Issuance Request, the relevant L/C Issuer shall 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 relevant 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 number of days (the "**Non- Extension Notice Date**") prior to the last day of such twelve month period to be agreed upon by the relevant L/C Issuer and the applicable Borrower at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the applicable Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the applicable Lenders shall be deemed to have authorized (but may not require) the relevant 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* that the relevant L/C Issuer shall not permit any such extension if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is ten (10) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving Credit Lender or the applicable Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant L/C Issuer will also deliver to the applicable 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 relevant L/C Issuer shall notify promptly the applicable Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Approved Foreign Currency, the applicable Borrower shall reimburse the L/C Issuer in such Approved Foreign Currency, unless the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Approved Foreign Currency, the L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 1:00 p.m. (New York City time), in the case of a drawing in Dollars, or 2:00 p.m. (London time) (or, if earlier, 9:00 a.m. New York city time), in the case of a drawing in an Approved Foreign Currency, on (1) the next Business Day immediately following the date of any honoring of a drawing by an L/C Issuer under a Letter of Credit that the applicable Borrower receives notice thereof (each such date, an “**Honor Date**”), the applicable Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing in the relevant Approved Currency; *provided* that the applicable Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with this Section 2.03 that such payment be financed with a Revolving Credit Borrowing under the Revolving Credit Facility or a Swing Line Borrowing under the Swing Line Facility in an equivalent amount and, to the extent so financed, the applicable Borrower’s obligation to make such payment shall be discharged and replaced by the resulting Revolving Credit Borrowing or Swing Line Borrowing, as applicable. If the applicable Borrower fails to so reimburse such L/C Issuer by such time, such L/C Issuer shall notify the Administrative Agent and the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof) (the “**Unreimbursed Amount**”), and the amount of such Appropriate Lender’s Pro Rata Share provided for under this Agreement thereof. In such event, the applicable Borrower 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 or Eurocurrency Rate Loans, as applicable, but subject to the amount of the unutilized portion of the Revolving Credit Commitments of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by an 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 Appropriate Lender (including any Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer in Dollars at the Administrative Agent’s Office for Dollar-denominated payments in an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the Unreimbursed Amount not later than 2:00 p.m. (New York City time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Revolving Credit Loan that is a Base Rate Loan or Eurocurrency Rate Loan, as applicable, to the applicable Borrower in such amount. The Administrative Agent shall promptly remit the funds so received to the relevant 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 or Eurocurrency Rate Loans, as applicable, because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the relevant 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 (which begins to accrue upon funding by the L/C Issuer) at the Default Rate for Revolving Credit Loans. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant 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 Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in

respect of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the applicable L/C Issuer, the Administrative Agent or the Collateral Agent, as the case may be, and 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 relevant L/C Issuer, the relevant Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each 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 relevant Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the relevant Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such 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 relevant 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), such 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 such L/C Issuer at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect, *plus* any reasonable administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. A certificate of the relevant 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) If, at any time after an 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), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement hereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share or other applicable share provided for under this Agreement 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 Federal Funds Effective Rate, *plus* any reasonable administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

(e) *Obligations Absolute.* The obligation of a Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it 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 agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party 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 relevant 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) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit; or any payment made by the relevant 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;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit;

(vi) any adverse change in the relevant exchange rates or in the availability of Dollars or the relevant Approved Foreign Currency to any Borrower or any Subsidiary or in the relevant currency markets generally; and

(vii) 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 Loan Party;

*provided* that the foregoing shall not excuse any L/C Issuer from liability to the applicable Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by such Borrower to the extent permitted by applicable Law) suffered by the such Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) *Role of L/C Issuers.* Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the relevant 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 Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any 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 Lenders or the Lenders holding a majority of the Revolving Credit Commitments, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or

Letter of Credit Issuance Request. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude such Borrower's 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 Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vii) of Section 2.03(e) or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such L/C Issuer; *provided* that anything in such clauses



to the contrary notwithstanding, a Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which are caused by such L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of willful misconduct or gross negligence on the part of the relevant L/C Issuer or such L/C Issuer's willful or grossly negligent 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 each case, as determined in a final and non-appealable judgment by a court of competent jurisdiction, such L/C Issuer shall be deemed to have exercised care in each such determination. In furtherance and not in limitation of the foregoing, each 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 no L/C Issuer shall 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, or refuse to accept and make payment upon such documents if such documents are not in compliance with the terms of such Letter of Credit.

(g) *Cash Collateral*. If (i) as of the Letter of Credit Expiration Date, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn (and without limiting the requirements of Section 2.03(a)(ii)(C)), (ii) any Event of Default occurs and is continuing and the Administrative Agent or the Lenders holding a majority of the Revolving Credit Commitments, as applicable, require the applicable Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or (iii) an Event of Default set forth under Section 8.01(f) occurs and is continuing, the applicable Borrower shall Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or the Letter of Credit Expiration Date, as the case may be), and shall do so not later than 2:00 p.m. (New York City time) on (x) in the case of the immediately preceding clauses (i) and (ii), (1) the Business Day that the applicable Borrower receives notice thereof, if such notice is received on such day prior to 12:00 noon (New York City time) or (2) if clause (1) above does not apply, the Business Day immediately following the day that the applicable Borrower receives such notice and (y) in the case of the immediately preceding clause (iii), the Business Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the applicable Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes hereof, "**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Appropriate Lenders, as collateral for the L/C Obligations, cash or deposit account balances ("**Cash Collateral**") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Appropriate Lenders). Derivatives of such term have corresponding meanings. Each Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Revolving Credit Lenders of the applicable Facility, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in a Cash Collateral Account and may be invested in readily available Cash Equivalents as directed by each Borrower. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the Cash Collateral Account, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrowers. To the extent any Event of Default giving rise to the

requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived by the Required Lenders, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrowers.

(h) *Letter of Credit Fees.* The applicable Borrower shall pay to the Administrative Agent for the account of the Revolving Credit Lenders for the applicable Revolving Credit Facility (in accordance with their Pro Rata Share or other applicable share provided for under this Agreement) a Letter of Credit fee in Dollars for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate for Revolving Credit Loans times the Dollar Equivalent of the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of 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 Pro Rata Shares allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in any Applicable Rate for Revolving Credit Loans during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by such Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.* The applicable Borrower shall pay directly to each L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit issued by it, equal to 0.125% per annum of the Dollar Equivalent of the aggregate face amount of such Letter of Credit. Such fronting fees shall be computed on a quarterly basis in arrears and upon the termination of the Revolving Credit Facility. Such fronting fees that are payable on a per annum basis shall be computed on the basis of the actual number of day elapsed in a year of 360-days. Such fronting fees shall be due and payable in Dollars on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the applicable Borrower shall pay directly to each L/C Issuer for its own account, in Dollars, with respect to each Letter of Credit issued by it the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such 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 within ten (10) Business Days of demand and are nonrefundable.

(j) *Conflict with Letter of Credit Issuance Request.* Notwithstanding anything else to the contrary in this Agreement or any Letter of Credit Issuance Request, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Issuance Request, the terms hereof shall control.

(k) *Addition of an L/C Issuer.* A Revolving Credit Lender may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrowers, the Administrative Agent and such Revolving Credit Lender. The Administrative Agent shall notify the Revolving Credit Lenders of any such additional L/C Issuer.

(l) *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 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.

(m) *Reporting.* Each L/C Issuer will report in writing to the Administrative Agent (i) on the first Business Day of each calendar month, the aggregate face amount of Letters of Credit issued by it and outstanding as of the last Business Day of the preceding calendar month (and on such other dates as the Administrative Agent may request), (ii) for each fiscal quarter of the Lead Borrower, on or prior to 9:00 a.m. (New York City time) two (2) Business Days prior to the last day of such fiscal quarter, the aggregate face amount of Letters of Credit (x) issued by it during such fiscal quarter and during the portion of the prior fiscal quarter of the Lead Borrower not covered by the report for such fiscal quarter required under this clause (ii) and (y) outstanding on such date, (iii) on or prior to

each Business Day on which such L/C Issuer expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance or amendment, and the aggregate face amount of Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and such L/C Issuer shall advise the Administrative Agent on such Business Day whether such issuance, amendment, renewal or extension occurred and whether the amount thereof changed), (iv) on each Business Day on which such L/C Issuer makes any L/C Disbursement, the date and amount of such L/C Disbursement, (v) on any Business Day on which a Borrower fails to reimburse an L/C Disbursement required to be reimbursed to such L/C Issuer on such day, the date and amount of such failure, (vi) for each month, on or prior to the second Business Day of such month, the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in an Approved Foreign Currency and outstanding on such date and (vii) on or prior to one (1) Business Day prior to the Closing Date, all information required by the Administrative Agent for new issuances, increases, decreases, extensions and terminations of Letters of Credit.

(n) *Provisions Related to Letters of Credit in respect of Extended Revolving Credit Commitments.* If the Letter of Credit Expiration Date in respect of any tranche of Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if consented to by the L/C Issuer which issued such Letter of Credit, if one or more other tranches of Revolving Credit Commitments in respect of which the Letter of Credit Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which consent has been obtained shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Sections 2.03(c) and (d)) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate amount of the unutilized Revolving Credit Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to immediately preceding clause (i), the applicable Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(g). Upon the maturity date of any tranche of Revolving Credit Commitments, the sublimit for Letters of Credit may be reduced as agreed between the L/C Issuers and the Borrowers, without the consent of any other Person.

(o) *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 Restricted Subsidiary, a Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries. In the event that a Borrower requests any Letter of Credit to be issued for the benefit or account of a Restricted Subsidiary, such Restricted Subsidiary shall deliver documentation (including, without limitation, customary letter of credit requests and reimbursement agreements) as may be reasonably requested by the Administrative Agent or the applicable L/C Issuer.

(p) *Provisions Related to Extended Revolving Credit Commitments.* In connection with the establishment of any Extended Revolving Credit Commitments or Other Revolving Credit Commitments and subject to the availability of unused Commitments with respect to such Class and the satisfaction of the conditions set forth in Section 4.02, a Borrower may with the written consent of the applicable L/C Issuer designate any outstanding Letter of Credit to be a Letter of Credit issued pursuant to such Class of Extended Revolving Credit Commitments or Other Revolving Credit Commitments. Upon such designation, such Letter of Credit shall no longer be deemed to be issued and outstanding under such prior Class and shall instead be deemed to be issued and outstanding under such Class of Extended Revolving Credit Commitments or Other Revolving Credit Commitments.

(q) *Replacement of an L/C Issuer.* An L/C Issuer may be replaced at any time by written agreement among the Borrowers, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of an L/C Issuer. From and after the effective date of any such replacement, (x) the successor L/C Issuer shall have all the rights and obligations of the L/C Issuer being replaced under this Agreement with respect to Letters of Credit to be issued thereafter and (y) references herein to the term "L/C Issuer" shall be deemed to refer

to such successor or to any previous L/C Issuer, or to such successor and all current and previous L/C Issuers, as the context shall require. After the replacement of

an L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(r) *Resignation of an L/C Issuer.* Subject to the appointment and acceptance of a successor L/C Issuer, any L/C Issuer may resign as an L/C Issuer at any time upon thirty days' prior written notice to the Administrative Agent, the Borrowers and the Lenders, in which case, such L/C Issuer shall be replaced in accordance with Section 2.03(q) above.

(s) *Existing Letters of Credit.* The parties hereto agree that the Existing Letters of Credit shall be deemed Letters of Credit for all purposes under this Agreement, without any further action by the Borrowers.

#### Section 2.04. *Swing Line Loans.*

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, Bank of America, in its capacity as Swing Line Lender, agrees to make loans in Dollars to the Lead Borrower (each such loan, a "**Swing Line Loan**"), from time to time on any Business Day during the period beginning on the Business Day after the Closing Date and until the Maturity Date of the Revolving Credit Facility in an aggregate principal 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 Pro Rata Share or other applicable share provided for under this Agreement 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 Swing Line Lender's Revolving Credit Commitment; *provided* that, after giving effect to any Swing Line Loan, (i) the Revolving Credit Exposure shall not exceed the aggregate Revolving Credit Commitments and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, *plus* such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, *plus* such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment then in effect; *provided, further*, that the Lead Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Lead Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. 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 Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such 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 telephone or 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. (New York City time) on the requested borrowing date and shall specify (i) the principal amount to be borrowed, which principal amount shall be a minimum of \$500,000 (and any amount in excess of \$500,000 shall be in integral multiples of \$100,000) 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 Swing Line Loan Notice (by telephone or in writing), 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. (New York City time) 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 Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 4:00 p.m. (New York City time) 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.



Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Revolving Credit Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Lead Borrower to eliminate the Swing Line Lender's Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by Cash Collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Pro Rata Share of the outstanding Swing Line Loans.

(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 such 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 Pro Rata Share or other applicable share provided for under this Agreement 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 aggregate Revolving Credit Commitments 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 Pro Rata Share or other applicable share provided for under this Agreement of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. (New York City time) 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 the 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 Federal Funds Effective Rate from time to time in effect, *plus* any reasonable administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. 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, the Lead Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) 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 Lead Borrower 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 Lender its Pro Rata Share or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) 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 10.06 (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 Pro Rata Share or other applicable share provided for under this Agreement 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 Effective Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(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, Eurocurrency Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Lead Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(g) *Provisions Related to Extended Revolving Credit Commitments.* If the maturity date shall have occurred in respect of any tranche of Revolving Credit Commitments (the "**Expiring Credit Commitment**") at a time when another tranche or tranches of Revolving Credit Commitments is or are in effect with a longer maturity date (each, a "**Non-Expiring Credit Commitment**" and collectively, the "**Non-Expiring Credit Commitments**"), then with respect to each outstanding Swing Line Loan, if consented to by the applicable Swing Line Lender, on the earliest occurring maturity date such Swing Line Loan shall be deemed reallocated to the tranche or tranches of the Non-Expiring Credit Commitments on a pro rata basis; *provided* that (x) to the extent that the amount of such reallocation would cause the aggregate credit exposure to exceed the aggregate amount of such Non-Expiring Credit Commitments, immediately prior to such reallocation the amount of Swing Line Loans to be reallocated equal to such excess shall be repaid or Cash Collateralized and (y) notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing, the Lead Borrower shall still be obligated to pay Swing Line Loans allocated to the Revolving Credit Lenders holding the Expiring Credit Commitments at the maturity date of the Expiring Credit Commitment or if the Loans have been accelerated prior to the maturity date of the Expiring Credit Commitment. Upon the maturity date of any tranche of Revolving Credit Commitments, the sublimit for Swing Line Loans may be reduced as agreed between the Swing Line Lender and the Lead Borrower, without the consent of any other Person.

(h) *Replacement of the Swing Line Lender.* The Swing Line Lender may be replaced at any time by written agreement among the Lead Borrower, the Administrative Agent, the replaced Swing Line Lender and the successor Swing Line Lender. The Administrative Agent shall notify the Lenders of any such replacement of a Swing Line Lender. From and after the effective date of any such replacement, (x) the successor Swing Line Lender shall have all the rights and obligations of the replaced Swing Line Lender under this Agreement with respect to Swing Line Loans made thereafter and (y) references herein

to the term “Swing Line Lender” shall be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all previous Swing Line Lenders, as the context shall require. After the replacement of a Swing Line Lender hereunder, the replaced Swing Line Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made by it prior to its replacement, but shall not be required to make additional Swing Line Loans.

(i) *Resignation of the Swing Line Lender.* Subject to the appointment and acceptance of a successor Swing Line Lender, the Swing Line Lender may resign as a Swing Line Lender at any time upon thirty days' prior written notice to the Administrative Agent, the Lead Borrower and the Lenders, in which case, such Swing Line Lender shall be replaced in accordance with Section 2.04(h) above.

Section 2.05. *Prepayments.*

(a) *Optional.*

(i) The Borrowers may, upon, subject to clause (iii) below, written notice to the Administrative Agent by the applicable Borrower(s), at any time or from time to time voluntarily prepay Term Loans of any Class and Revolving Credit Loans in whole or in part without premium or penalty (subject to Section 2.05(a)(iv)); *provided that* (1) such notice must be received by the Administrative Agent not later than 1:00 p.m. (New York City time) (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) one (1) Business Day prior to any prepayment of Base Rate Loans, in each case, unless the Administrative Agent agrees to a shorter period in its discretion; (2) (A) if such Eurocurrency Rate Loan is denominated in Dollars, any prepayment of Eurocurrency Rate Loans shall be in a minimum of \$500,000, or a whole multiple of \$100,000 in excess thereof, (B) if such Eurocurrency Rate Loan is denominated in Canadian Dollars, any prepayment of Eurocurrency Rate Loans shall be in a minimum of C\$500,000 or a whole multiple of C\$100,000 in excess thereof and (C) if such Eurocurrency Rate Loan is denominated in euros, any prepayment of Eurocurrency Rate Loans shall be in a minimum of €500,000, or a whole multiple of €100,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a minimum 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 Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. Subject to Section 2.05(iii) below, if such notice is given by the applicable Borrower(s), the applicable Borrower(s) shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon to such date, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the applicable Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share as provided for under this Agreement.

(ii) The Lead Borrower may, upon, subject to clause (iii) below, written notice to the Swing Line Lender (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* (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (New York City time) on the date of the prepayment, and (2) any such prepayment shall be in a minimum Principal Amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Lead Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything to the contrary contained in this Agreement, subject to the payment of any amounts owing pursuant to Section 3.05, the applicable Borrower(s) may rescind any notice of prepayment under Sections 2.05(a)(i) or 2.05(a)(ii) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed. Each prepayment of any Class of Term Loans pursuant to this Section 2.05(a) shall be applied as directed by the applicable Borrower (which may be applied to any specific Class, tranche or facility of Indebtedness) and, absent such direction, shall be applied in direct order of maturity to repayments thereof required pursuant to Section 2.07(a).

(iv) In the event that, on or prior to the six-month anniversary of the Closing Date, the Lead Borrower or CSLS Borrower (x) prepays, refinances, substitutes or replaces any Initial Term B Loans pursuant to a Repricing Transaction (including, for avoidance of doubt, any prepayment made pursuant to Section 2.05(b)(iii) that

constitutes a Repricing Transaction), or (y) effects any amendment, amendment and restatement or other modification of this Agreement resulting in a Repricing Transaction, the applicable Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term B Lenders, (1) in the case of clause (x) above, a prepayment premium of 1.00% of the aggregate principal amount of the applicable Initial Term B Loans incurred on the Closing Date so prepaid, refinanced, substituted or replaced and (2) in the case of clause (y) above, a fee equal to 1.00% of the aggregate principal amount of the applicable Initial Term B Loans amended or otherwise modified pursuant to such amendment. If, on or prior to the six-month anniversary of the Closing Date, any Term B Lender that is a Non-Consenting Lender and is replaced pursuant to Section 3.07(a) in connection with any amendment, amendment and restatement or other modification of this Agreement resulting in a Repricing Transaction, such Term B Lender (and not any Person who replaces such Term B Lender pursuant to Section 3.07(a)) shall receive its pro rata portion (as determined immediately prior to it being so replaced) of the prepayment premium or fee described in the preceding sentence. Such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(v) Notwithstanding anything in any Loan Document to the contrary, so long as no Default has occurred and is continuing and, only to the extent funded at a discount, no proceeds of Revolving Credit Borrowings are applied to fund any such repayment, any Company Party may prepay the outstanding Term Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) (or Holdings, the Borrowers or any of its Subsidiaries may purchase such outstanding Term Loans and immediately cancel them) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Term Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Term Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v); *provided* that no Company Party shall initiate any action under this Section 2.05(a)(v) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by a Company Party on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date the Company Party was notified that no Term Lender was willing to accept any prepayment of any Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of any Company Party’s election not to accept any Solicited Discounted Prepayment Offers.

(B) (I) Subject to the proviso to subsection (A) above, any Company Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (II) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Term Lender and/or

(y) each Term Lender with respect to any Class of Term Loans on an individual tranche basis, (III) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable tranche, the tranche or tranches of Term Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Term Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (IV) the Specified Discount Prepayment Amount shall be in an aggregate principal amount not less than

\$10,000,000 (as applicable) and whole increments of \$1,000,000 (as applicable) in excess thereof and (V) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m. (New York City time), on the third Business Day after the date of delivery of such notice to such Lenders (the “**Specified Discount Prepayment Response Date**”).



(1) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the tranches of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(2) If there is at least one Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (1) above; *provided* that if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “**Specified Discount Proration**”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, tranche and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the “**Discount Range Prepayment Amount**”), the tranche or tranches of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the “**Discount Range**”) of the principal amount of such Term Loans with respect to each relevant tranche of Term Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate principal amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m. (New York City time), on the third Business Day after the date of delivery of such notice to such Lenders (the “**Discount Range**

**Prepayment Response Date**”). Each Term Lender’s Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the

Discount Range (the “**Submitted Discount**”) at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender’s Term Loans (the “**Submitted Amount**”) such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a “**Participating Lender**”).

(3) If there is at least one Participating Lender, the relevant Company Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than or equal to the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Term Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by

such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such

notice shall specify the maximum aggregate principal amount of the Term Loans (the “**Solicited Discounted Prepayment Amount**”) and the tranche or tranches of Term Loans the applicable Borrower is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate principal amount not less than

\$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m. (New York City time), on the third Business Day after the date of delivery of such notice to such Term Lenders (the “**Solicited Discounted Prepayment Response Date**”). Each Term Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the “**Offered Discount**”) at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the “**Offered Amount**”) such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party (the “**Acceptable Discount**”), if any. If the Company Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “**Acceptance Date**”), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the tranches of Term Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount;

*provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall

be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Company Party in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent’s Office in immediately available funds not later than 11:00 a.m. (New York City time) on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining principal installments of the relevant tranche of Loans on a pro rata basis across such installments. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective Pro Rata Share. The aggregate principal amount of the tranches and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the Lead Borrower.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent’s (or its delegate’s) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received

outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction



Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(b) *Mandatory.*

(i) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ending December 31, 2022) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Lead Borrower shall cause to be offered to be prepaid in accordance with clause (b)(vi) and (ix) below, an aggregate principal amount of Term Loans in an amount equal to (the “**ECF Payment Amount**”) (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the fiscal year covered by such financial statements *minus* (B) the sum of (1) all voluntary prepayments, repurchases or redemptions of Term Loans made during such fiscal year or after year-end and prior to when such Excess Cash Flow prepayment is due (including, in the case of Term Loans prepaid pursuant to (x) Section 2.05(a)(v), the actual purchase price paid in cash pursuant to a “Dutch Auction” and (y) open-market purchases pursuant to Section 10.07(l), the actual purchase price paid in cash pursuant to such purchase), (2) all voluntary prepayments, repurchases or redemptions of Revolving Credit Loans during such fiscal year or after year-end and prior to when such Excess Cash Flow prepayment is due to the extent the Revolving Credit Commitments are permanently reduced by the amount of such payments, (3) all voluntary prepayments, repurchases or redemptions of any Incremental Equivalent First Lien Debt, Credit Agreement Refinancing Indebtedness, Permitted Ratio Debt, incurred Indebtedness under Section 7.03(g), Senior Secured Notes and any other Indebtedness (in the case of any revolving credit facilities, to the extent accompanied by a permanent reduction of the corresponding commitment), in each case secured on a *pari passu* basis with the Initial Term Loans, and repurchased or redeemed on a pro rata basis or less than pro rata basis with the Initial Term Loans (except to the extent financed with proceeds of long-term funded Indebtedness (other than revolving loans)) during such fiscal year or after year-end and prior to when such Excess Cash Flow prepayment is due, (4) the amount of Capital Expenditures or acquisitions of IP Rights to the extent not expensed during such period or, at the option of the Lead Borrower, made after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such Capital Expenditures or acquisitions are not actually made as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period, to the extent financed with internally generated cash or Borrowings under the Revolving Credit Facility), (5) the aggregate amount of all principal payments of Indebtedness of the Lead Borrower or the Restricted Subsidiaries made (or committed to be made) during such period or, at the option of the Lead Borrower, made after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such payments are not actually made as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) (including (A) the principal component of payments in respect of Financing Leases, (B) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07, and (C) any mandatory prepayment of Term Loans pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase but excluding (X) all other voluntary and mandatory prepayments of Term Loans and all prepayments and repayments of Revolving Credit Loans and Swing Line Loans and (Y) all prepayments in respect of any other revolving credit facility, except in the case of clause (Y) to the extent there is an equivalent permanent reduction in commitments thereunder to the extent financed with internally generated cash), (6) cash payments by the Lead Borrower and the Restricted Subsidiaries made (or committed to be made) during such period or, at the option of the Lead Borrower, made after

such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such payments are not actually made as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) in respect of long-term liabilities of the Lead Borrower and the Restricted Subsidiaries other than Indebtedness, to the extent financed with internally

generated cash, (7) the amount of Investments and acquisitions made (or committed to be made) by the Lead Borrower and the Restricted Subsidiaries during such period or, at the option of the Lead Borrower, made after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such Investments and acquisitions are not actually made as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) and paid (or committed to be paid) in cash pursuant to Section 7.02 (other than Section 7.02(a), (c) or (x)), to the extent financed with internally generated cash or Borrowings under the Revolving Credit Facility, (8) the amount of Restricted Payments paid in cash (or committed to be paid) during such period or, at the option of the Lead Borrower, paid after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such payments are not actually paid as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) pursuant to Section 7.06(i) (clauses (i), (ii) or (iii) only) or Section 7.06(g), to the extent financed with internally generated cash or Borrowings under the Revolving Credit Facility, (9) the aggregate amount of expenditures made (or committed to be made) by the Lead Borrower and its Restricted Subsidiaries in cash during such period or, at the option of the Lead Borrower, made after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such expenditures are not actually made as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period, to the extent financed with internally generated cash, (10) the aggregate amount of any premium, make-whole or penalty payments paid (or committed to be paid) in cash by the Lead Borrower and its Restricted Subsidiaries during such period or, at the option of the Lead Borrower, paid after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such premium, make-whole or penalty payments are not actually paid as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) that are required to be made in connection with any prepayment of Indebtedness, to the extent financed with internally generated cash and (11) the amount of cash taxes paid (or committed to be paid) in such period or, at the option of the Lead Borrower, paid after such period and prior to the date the Excess Cash Flow prepayment is due (it being understood that to the extent such taxes are not actually paid as committed in a subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, in the case of each of the immediately preceding clauses (1) through (11), without duplication of any deduction from Excess Cash Flow in any prior period; *provided* that prepayments pursuant to this Section 2.05(b)(i) shall only be required for any fiscal year if the amount of ECF Payment Amount for such fiscal year is greater than \$25,000,000; *provided, further*, that, for the avoidance of doubt, only amounts in excess of such \$25,000,000 shall be prepaid pursuant to this Section 2.05(b)(i).

(ii) If (1) the Lead Borrower or any Restricted Subsidiary Disposes of any property or assets constituting Collateral pursuant to Sections 7.05(f), (i), (j) or (m) or (2) any Casualty Event occurs, which results in the realization or receipt by the Lead Borrower or Restricted Subsidiary of Net Proceeds, the Lead Borrower shall cause to be offered to be prepaid in accordance with clause (b)(vi) and (ix) below, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Lead Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(xi) below, an aggregate principal amount of Term Loans in an amount equal to 100.0% of all Net Proceeds received (such amount, the “**Applicable Proceeds**”); *provided* that if at the time that any such prepayment would be required, the Lead Borrower is required to offer to repurchase Incremental Equivalent First Lien Debt, Credit Agreement Refinancing Indebtedness, Permitted Ratio Debt, incurred Indebtedness under Section 7.03(g), the Senior Secured Notes or any other Indebtedness outstanding at such time that is secured by a Lien on the Collateral ranking *pari passu* with the Lien securing the Term Loans pursuant to the terms of the documentation governing such Indebtedness with the Net Proceeds of such Disposition or Casualty Event (such Indebtedness required to be offered to be so repurchased, “**Other Applicable Indebtedness**”), then the Lead Borrower may apply the Applicable Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the

Term Loans and Other Applicable Indebtedness at such time) and the remaining Net Proceeds so received to the prepayment of such Other Applicable Indebtedness; *provided, further*, that (A) the portion of the Applicable Proceeds (but not the other Net Proceeds received) allocated to the Other Applicable Indebtedness shall not exceed the amount of Applicable Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii) shall be reduced accordingly and (B) to the

extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(iii) If the Lead Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date (other than Indebtedness not prohibited under Section 7.03), the Lead Borrower shall cause to be offered to be prepaid in accordance with clause (b)(vi) below an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Lead Borrower or such Restricted Subsidiary of such Net Proceeds; *provided* that if at the time that any such prepayment would be required, the Lead Borrower is required to offer to repurchase any Other Applicable Indebtedness with the Net Proceeds of such Indebtedness, then the Lead Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time); *provided, further*, that (A) the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(iii) shall be reduced accordingly and (B) to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof. If the Lead Borrower or any other Loan Party incurs any Credit Agreement Refinancing Indebtedness, the Net Proceeds of such Credit Agreement Refinancing Indebtedness shall be used pursuant to clause (iv) of the definition thereof.

(iv) If for any reason the aggregate Revolving Credit Exposures at any time exceeds the aggregate Revolving Credit Commitments then in effect (including, for the avoidance of doubt, as a result of the termination of any Class of Revolving Credit Commitments on the Maturity Date with respect thereto), the Borrowers shall promptly prepay or cause to be promptly prepaid Revolving Credit Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided* that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(iv) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans such aggregate Outstanding Amount exceeds the aggregate Revolving Credit Commitments then in effect.

(v) Except with respect to Loans incurred in connection with any Refinancing Amendment, Term Loan Extension Request, Revolver Extension Request or any Incremental Amendment (which may be prepaid on a less than pro rata basis in accordance with its terms), (A) each prepayment of Term Loans pursuant to this Section 2.05(b) shall be applied as between series, Classes or tranches of Term Loans as directed by the Borrowers (provided that (i) any prepayment of Term Loans with the Net Proceeds of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt, and (ii) any Class of Incremental Term Loans may specify that one or more other Classes of Term Loans and Incremental Term Loans may be prepaid prior to such Class of Incremental Term Loans); (B) with respect to each Class of Term Loans, each prepayment pursuant to clauses (i) through (iv) of this Section 2.05(b) shall be applied to the scheduled installments of principal thereof following the date of prepayment pursuant to Section 2.07(a) in direct order of maturity (without premium or penalty), unless otherwise directed by the Borrowers; and (C) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment.

(vi) The Borrowers shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (i) through (iv) of this Section 2.05(b) at least four (4) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the applicable Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment.

(vii) *Funding Losses, Etc.* All prepayments under this Section 2.05 shall be made together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05. Notwithstanding

any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05, prior to the last day of the Interest Period therefor, the Borrowers may, in their discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from any Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrowers or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with this Section 2.05.

(viii) *Term Opt-out of Prepayment.* With respect to each prepayment of Term Loans required pursuant to Section 2.05(b)(i) or (ii), (A) each Lender of Term Loans will have the right to refuse such offer of prepayment by giving written notice of such refusal to the Administrative Agent within one (1) Business Day after such Lender's receipt of notice from the Administrative Agent of such offer of prepayment ("**Declined Proceeds**") (in which case the applicable Borrower shall not prepay any Term Loans of such Lender on the date that is specified in clause (B) below), (B) the applicable Borrower will make all such prepayments not so refused upon the fourth Business Day after delivery of notice by the applicable Borrower pursuant to Section 2.05(b)(vi) and (C) any Declined Proceeds may be retained by the applicable Borrower.

(ix) In connection with any mandatory prepayments by the Borrowers of the Term Loans pursuant to this Section 2.05(b), such prepayments shall be applied on a pro rata basis to the then outstanding Term Loans of the applicable Class or Classes being prepaid irrespective of whether such outstanding Term Loans are Base Rate Loans or Eurocurrency Rate Loans; *provided* that if no Lenders exercise the right to waive a given mandatory prepayment of the Term Loans pursuant to Section 2.05(b)(viii), then, with respect to such mandatory prepayment, the amount of such mandatory prepayment within any tranche of Term Loans shall be applied first to Term Loans of such tranche that are Base Rate Loans to the full extent thereof before application to Term Loans of such tranche that are Eurocurrency Rate Loans in a manner that minimizes the amount of any payments required to be made by the Borrowers pursuant to Section 3.05.

(x) *Foreign Dispositions and Excess Cash Flow.* Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary ("Foreign Disposition") or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, an amount equal to the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05 so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Lead Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow that, in each case, would otherwise be required to be used to make an offer of prepayment pursuant to Sections 2.05(b)(i) or 2.05(b)(ii), is permitted under the applicable local law, an amount equal to such Net Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes that would be payable or reserved against as a result of repatriating such amounts) to the repayment of the Term Loans pursuant to this Section 2.05 and (ii) to the extent that the Lead Borrower has reasonably determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or Foreign Subsidiary's Excess Cash Flow would have material adverse tax consequences to Holdings, the Lead Borrower, any direct or indirect owner of Holdings or any of Holdings' direct or indirect Subsidiaries with respect to such Net Proceeds or Excess Cash Flow, the Lead Borrower shall apply an amount equal to such Net Proceeds or Excess Cash Flow to such reinvestments or prepayments, as applicable, as if such Net Proceeds or Excess Cash Flow had been received by the Lead Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or

reserved against if such Net Proceeds or Excess Cash Flow had been repatriated (or, if less, the Net Proceeds or Excess Cash Flow that would be calculated if received by such Foreign Subsidiary).

Section 2.06. *Termination or Reduction of Commitments.*

(a) *Optional.* The Borrowers may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class,



in each case without premium or penalty; *provided* that (i) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction (unless the Administrative Agent agrees to a shorter period in its discretion), (ii) any such partial reduction shall be in a minimum aggregate principal amount of \$1,000,000, or any whole multiple of \$250,000, in excess thereof or, if less, the entire amount thereof and (iii) if, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such sublimit shall be automatically reduced by the amount of such excess. The amount of any such Commitment reduction shall not otherwise be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the applicable Borrower. Notwithstanding the foregoing, the applicable Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of all of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory*. The Initial Term Commitment of each Term Lender shall be automatically and permanently reduced to \$0 upon the funding of the Initial Term Loans to be made by it on the Closing Date. The Revolving Credit Commitment of each Class shall automatically and permanently terminate on the Maturity Date with respect to such Class of Revolving Credit Commitments.

(c) *Application of Commitment Reductions; Payment of Fees*. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

#### Section 2.07. *Repayment of Loans*.

(a) *Term A Loans*. The U.S. Borrowers shall repay to the Administrative Agent for the ratable account of the Term A Lenders (i) on the last Business Day of each March, June, September and December, commencing with March 31, 2022, an aggregate principal amount of Initial Term A Loans incurred on the Closing Date equal to 1.25% of the aggregate principal amount of all Initial Term A Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (ii) on the Maturity Date for the Initial Term A Loans, the aggregate principal amount of all Initial Term A Loans outstanding on such date.

(b) *Term B Loans*. The U.S. Borrowers shall repay to the Administrative Agent for the ratable account of the Term B Lenders (i) on the last Business Day of each March, June, September and December, commencing with March 31, 2022, an aggregate principal amount of Initial Term B Loans incurred on the Closing Date equal to 0.25% of the aggregate principal amount of all Initial Term B Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (ii) on the Maturity Date for the Initial Term B Loans, the aggregate principal amount of all Initial Term B Loans outstanding on such date.

(c) In the event that any Incremental Term Loans, Refinancing Term Loans or Extended Term Loans are made, such other Incremental Term Loans, Refinancing Term Loans or Extended Term Loans, as applicable, shall be repaid by the applicable Borrower in the amounts and on the dates set forth in the Incremental Amendment, Refinancing Amendment or Extension Amendment with respect thereto and on the applicable Maturity Date thereof.

(d) *Revolving Credit Loans*. The Borrowers shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the applicable Maturity Date for the Revolving Credit Facilities of a given Class the aggregate principal amount of all of its Revolving Credit Loans of such Class outstanding on such date.

(e) *Swing Line Loans*. The Lead Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date that is five (5) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility (although Swing Line Loans may thereafter be reborrowed, in accordance with the terms and conditions hereof, if there are one or more Classes of Revolving Credit Commitments which remain in effect).

Section 2.08. *Interest.*

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan 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; (ii) each Base Rate Loan (other than a 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; 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 Revolving Credit Loans.

(b) During the continuance of a Default under Section 8.01(a), each Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such 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.

Section 2.09. *Fees.* In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee.* The Lead Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender under the applicable Revolving Credit Facility in accordance with its Pro Rata Share or other applicable share provided for under this Agreement, a commitment fee in Dollars equal to the Commitment Fee Rate with respect to Revolving Credit Loans, times the actual daily amount by which the aggregate Revolving Credit Commitments for the applicable Revolving Credit Facility exceeds the sum of (A) the Outstanding Amount of Revolving Credit Loans for such Facility, and (B) the Outstanding Amount of L/C Obligations for such Facility; *provided* that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Lead Borrower so long as such Lender shall be a Defaulting Lender, except to the extent that such commitment fee shall otherwise have been due and payable by the Lead Borrower prior to such time; *provided, further*, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender; and *provided, further*, that when determining the Outstanding Amount of L/C Obligations for Letters of Credit issued by Lenders other than Bank of America for purposes of calculating any commitment fee, the Administrative Agent shall make such determinations using the information provided pursuant to clauses (i) through (iv) of Section 2.03(m) and any related Letter of Credit activity that posts subsequent to the date of such information but prior to the end of the calendar quarter shall be reflected in adjustments to such commitment fee for the next billing cycle. The commitment fee on each Revolving Credit Facility shall accrue at all times from the Closing Date until the Maturity Date for the Revolving Credit Commitments, including at any time during which one or more of the conditions in Article 4 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 December 31, 2021, and on the Maturity Date for the Revolving Credit Commitments. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Commitment Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Commitment Fee Rate separately for each period

during such quarter that such Commitment Fee Rate was in effect. The commitment fee shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(b) [Reserved].

(c) *Other Fees.* The Borrowers shall pay to the Agents such fees as shall have been separately agreed upon in writing (including but not limited to the Agent Fee Letter) 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 (except as expressly agreed between the Borrowers and the applicable Agent).

Section 2.10. *Computation of Interest and Fees.* All computations of interest for Base Rate Loans shall be made on the basis of a year of three hundred sixty-five (365) days, or three hundred sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred sixty (360) day year and actual days elapsed. 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 (1) 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.

Section 2.11. *Evidence of Indebtedness.*

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrowers, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence 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 payable to such Lender and its registered assignees, 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, currency 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 and, in the case of the Administrative Agent, entries in the Register, 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.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the applicable Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrowers under this Agreement and the other Loan Documents.

Section 2.12. *Payments Generally.*

(a) All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to an Approved Foreign Currency, 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 applicable Administrative Agent's Office for Dollar-denominated payments and in Same Day Funds not later than 1:00 p.m. (New York City time) on the date specified herein. Except as otherwise expressly

provided herein, all payments by the Borrowers hereunder in an Approved Foreign Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such

Approved Foreign Currency and in Same Day Funds not later than 2:00 p.m. (London time) (or, if earlier, 9:00 a.m. New York city time) on the dates specified herein. If, for any reason, a Borrower is prohibited by any Law from making any required payment hereunder in an Approved Foreign Currency, such Borrower shall make such payment in Dollars in an amount equal to the Dollar Equivalent of such Approved Foreign Currency payment amount. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after the time specified above shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Except as otherwise provided herein, if any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless any Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that such Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that such Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto.; *provided that*:

(i) with respect to any payment that the Administrative Agent makes for the account of any Lender or if any L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the follow applies (such payment referred to as the "**Rescindable Amount**"): (1) any Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by any Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such L/C Issuer, in Same Day 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation; and

(ii) if any Lender failed to make such payment (including, without limitation, failure to fund participations in respect of any Letter of Credit or Swing Line Loan), such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the applicable Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Federal Funds Effective Rate, *plus* any reasonable administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount (including, without limitation, failure to fund participations in respect of any Letter of Credit or Swing Line Loan) forthwith upon the Administrative Agent's

demand therefor, the Administrative Agent may make a demand therefor upon such Borrower, and such Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or such Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.



(d) 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 2, 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 4 or in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment 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.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation 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 or purchase its participation.

(f) 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.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.04. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

(h) Notwithstanding anything to the contrary contained herein, (i) all amounts payable by the Borrowers under this Agreement (other than payment of principal, interest and any payments required to be made by the Dutch Borrower with respect to Loans made to it and participation fees and fronting fees payable with respect to Letters of Credit requested by it) shall be an obligation of, and shall be discharged by, the Lead Borrower, (ii) the Dutch Borrower shall not be liable for any obligations of the Lead Borrower hereunder and (iii) each of the Lead Borrower, the CSLS Borrower and the Dutch Borrower shall be severally and jointly liable for the obligations of the Dutch Borrower hereunder.

Section 2.13. *Sharing of Payments.* (a) If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (b) notify the Administrative Agent of such fact, and (c) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the

provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant

permitted hereunder. The Borrowers agree that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of clause (iv) of the definition of Indemnified Taxes, a Lender that acquires a participation pursuant to this Section 2.14 shall be treated as having acquired its interest in such participation on the date(s) on which it acquired its interest(s) in the applicable Loan(s) or Commitment(s) to which such participation relates.

Section 2.14. *Incremental Credit Extensions.*

(a) *Incremental Commitments.* The Borrowers may, at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an “**Incremental Loan Request**”), request (A) one or more new commitments which may be in the same Facility as any outstanding Term A Loans or Term B Loans of an existing Class (a “**Term Loan Increase**”) or a new Class of Term Loans (each, an “**Incremental Term Facility**,” collectively with any Term Loan Increase, the “**Incremental Term Commitments**”) and/or (B) one or more increases in the amount of the Revolving Credit Commitments or any Incremental Revolving Facility (a “**Revolving Commitment Increase**”) or the establishment of one or more new revolving credit commitments (each, an “**Incremental Revolving Facility**” and collectively with any Incremental Term Facility, an “**Incremental Facility**” and any such new commitments, collectively with any Revolving Commitment Increases, the “**Incremental Revolving Credit Commitments**” and the Incremental Revolving Credit Commitments, collectively with any Incremental Term Commitments, the “**Incremental Commitments**”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders. The Incremental Facilities shall be (A) secured by the Collateral on a *pari passu* basis with the Liens securing the Initial Term Loans, (B) secured by the Collateral on a junior Lien basis to the Liens securing the Initial Term Loans or (C) unsecured.

(b) *Incremental Loans.* Any Incremental Commitments effected through the establishment of one or more new revolving credit commitments or new Term Loans not in the same Facility of any existing Class of Term Loans made on an Incremental Facility Closing Date shall be designated a separate Class of Incremental Commitments for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Term Commitments of any Class are effected (including through any Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Term Lender of such Class shall make a Loan to the Borrowers (or any Loan Party organized under the laws of the United States, any state thereof or the District of Columbia, may be designated as a borrower in respect thereof so long as all obligors under such Incremental Facility are the same as with respect to the Loans hereunder) (an “**Incremental Term Loan**”) in an amount equal to its Incremental Term Commitment of such Class and (ii) each Incremental Term Lender of such Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto. On any Incremental Facility Closing Date on which any Incremental Revolving Credit Commitments of any Class are effected through the establishment of one or more new revolving credit commitments (including through any Revolving Commitment Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Revolving Credit Lender of such Class shall make its Commitment available to the Borrowers (or any Loan Party organized under the laws of the United States, any state thereof or the District of Columbia, may be designated as a

borrower in respect thereof so long as all obligors under such Incremental Facility are the same as with respect to the Loans hereunder) (when borrowed, “**Incremental Revolving Credit Loans**” and collectively with Incremental Term Loans, an “**Incremental Loans**”) in an amount equal to its Incremental Revolving Credit Commitment of such Class and (ii) each Incremental Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Credit Commitment of such Class and the Incremental Revolving Credit Loans of such Class made pursuant thereto. For the avoidance of doubt, Incremental Term Loans may have identical terms to any of the Term Loans and be treated as the same Class as any of such Term Loans.

(c) *Incremental Loan Request.* Each Incremental Loan Request from the Borrowers pursuant to this Section 2.14 shall set forth the requested amount, the Approved Currency (in the case of any Incremental Term Commitments or Incremental Term Loans, limited to Dollars and euro), and proposed terms of the relevant Incremental Term Loans or Incremental Revolving Credit Commitments. Incremental Term Loans may be made, and Incremental Revolving Credit Commitments may be provided, by any existing Lender (but each existing Lender will not have an obligation to make any Incremental Commitment, nor will the Borrowers have any obligation to approach any existing lenders to provide any Incremental Commitment) or by any other bank or other financial institution or other institutional lender (any such other bank or other financial institution or other institutional lender being called an “**Additional Lender**”) (each such existing Lender or Additional Lender providing such, an “**Incremental Revolving Credit Lender**” or “**Incremental Term Lender,**” as applicable, and, collectively, the “**Incremental Lenders**”); *provided* that (i) the Administrative Agent and, in the case of an Incremental Revolving Commitment, each Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Lender’s or Additional Lender’s making such Incremental Term Loans or providing such Incremental Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender, (ii) with respect to Incremental Term Commitments, any Affiliated Lender providing an Incremental Term Commitment shall be subject to the same restrictions set forth in Section 10.07(l) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Incremental Revolving Credit Commitments, unless subsequently purchased from a Defaulting Lender pursuant to Section 10.07(l).

(d) *Effectiveness of Incremental Amendment.* The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the date thereof (the “**Incremental Facility Closing Date**”) of each of the following conditions:

(i) (x) if the proceeds of such Incremental Commitments are being used to finance a Permitted Acquisition, Investment, or irrevocable repayment, repurchase or redemption of any Indebtedness, no Event of Default under Sections 8.01(a) or, solely with respect to Holdings and the Lead Borrower, Section 8.01(f) shall have occurred and be continuing or would exist after giving effect to such Incremental Commitments, or (y) if otherwise, no Event of Default shall have occurred and be continuing or would exist after giving effect to such Incremental Commitments;

(ii) after giving effect to such Incremental Commitments, the conditions of Section 4.02(i) shall be satisfied (it being understood that all references to “**the date of such Credit Extension**” or similar language in such Section 4.02 shall be deemed to refer to the effective date of such Incremental Amendment); *provided* that if the proceeds of such Incremental Commitments are being used to finance a Permitted Acquisition, Investment, or irrevocable repayment, repurchase or redemption of any Indebtedness, there shall be no requirement to satisfy any or all conditions of Section 4.02(i), instead, the accuracy of the representations and warranties shall refer to the accuracy of the representations and warranties that would constitute Specified Representations, in each case, subject to the provisions set forth herein in connection with Specified Transactions; *provided, further,* that the Incremental Lenders providing such Incremental Commitments may waive the requirement regarding the accuracy of Specified Representations;

(iii) [Reserved];

(iv) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in increments of \$1,000,000 (provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(v)) and each Incremental Revolving Credit Commitment shall be in an aggregate principal amount that is not less than \$5,000,000 and shall be in increments of \$1,000,000 (provided that such amount may be less than \$5,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(v));

(v) the aggregate principal amount of the Incremental Term Loans and the Incremental Revolving Credit Commitments shall not exceed the sum of (A) the Incremental Base Amount *plus* (B) all

voluntary prepayments, repurchases, redemptions and other retirements of Term Loans, Incremental Equivalent First Lien Debt and all voluntary prepayments of Revolving Credit Loans accompanied by corresponding voluntary permanent reductions of Commitments in respect of such Revolving Credit Loans prior to or simultaneous with the Incremental Facility Closing Date (including through (x) “Dutch Auctions” open to all Lenders of the applicable Class on a pro rata basis in accordance with procedures of

the type described in Section 2.05(a)(v) or (y) open-market purchases pursuant to Section 10.07(l), which shall be credited to the extent of the actual purchase price paid in cash for such Loans purchased or retired in connection with such “Dutch Auction” or open-market purchase) in each case other than to the extent funded with a contemporaneous incurrence of long-term funded Indebtedness (other than revolving loans) (excluding (1) voluntary prepayments, repurchases, redemptions and other retirements of Incremental Term Loans and all voluntary prepayments of Revolving Credit Loans accompanied by corresponding, voluntary permanent reductions of Incremental Revolving Credit Commitments (2) Incremental Revolving Credit Commitments and (3) Incremental Equivalent First Lien Debt, in each case to the extent such Incremental Term Loans, Revolving Credit Commitments and/or Incremental Equivalent First Lien Debt were obtained pursuant to clause (C) below), *plus* (C) additional amounts (including at any time prior to the utilization of

amounts under clauses (A) and (B) above) so long as (1) if such Indebtedness is secured by the Collateral on a *pari passu* basis with the Liens securing the Initial Term Loans, the Consolidated First Lien Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended period of four consecutive fiscal quarters for which financial statements are internally available, does not exceed 2.25 to 1.00, (2) if such Indebtedness is secured by the Collateral on a junior Lien basis to the Liens securing the Initial Term Loans, the Consolidated Secured Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended period of four consecutive fiscal quarters for which financial statements are internally available, does not exceed 4.00 to 1.00 and (3) if such Indebtedness is unsecured, the Consolidated Fixed Charge Coverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended period of four consecutive fiscal quarters for which financial statements are internally available, is not less than 2.00 to 1.00; *provided*, that the requirements of this clause (C) shall be deemed satisfied if in the case of any such Indebtedness being applied to finance a Permitted Acquisition or other similar Investment not prohibited hereunder, the Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio or Consolidated Fixed Charge Coverage Ratio, as applicable, would be no greater than the Consolidated First Lien Net Leverage Ratio (in the case of Indebtedness secured by the Collateral on a *pari passu* basis with the Liens securing the Term Loans), no greater than the Consolidated Secured Net Leverage Ratio (in the case of Indebtedness secured by the Collateral on a junior lien basis to the Liens securing the Term Loans) or less than the Consolidated Fixed Charge Coverage Ratio (in all other cases), as applicable, immediately prior to the incurrence of such Indebtedness and consummation of such Permitted Acquisition or other Investment (the amounts under the foregoing clauses (A) and (B) are herein referred to as the “**Free and Clear Incremental Amount**,” and the amounts under the foregoing clause (C) are herein referred to as the “**Incurrence-Based Incremental Amount**” (the Free and Clear Incremental Amount, together with the Incurrence-Based Incremental Amount, less the aggregate principal amount of Indebtedness incurred pursuant to Section 7.03(q) at or prior to such time, are herein referred to as the “**Available Incremental Amount**”));

(vi) such other conditions as the Borrowers, each Incremental Lender providing such Incremental Commitments and the Administrative Agent shall agree.

The Borrowers may elect to use the Incurrence-Based Incremental Amount prior to the Free and Clear Incremental Amount or any combination thereof, and any portion of any Incremental Facility incurred in reliance on the Free and Clear

Incremental Amount shall be reclassified, as the Borrowers may elect from time to time, as incurred under the Incurrence-Based Incremental Amount if the applicable Borrower meets the applicable ratio for the Incurrence-Based Incremental Amount at such time on a Pro Forma Basis, and if any applicable ratio for the Incurrence-Based Incremental Amount would be satisfied on a Pro Forma Basis as of the end of any subsequent fiscal quarter after the initial incurrence of such Incremental Facility, such reclassification may be deemed to have automatically occurred.

For purposes of determining Pro Forma Compliance and any testing of any ratios in the Incurrence-Based Incremental Amount, (a) it shall be assumed that all commitments under any Incremental Revolving Facility then



being established are fully drawn, (b) the cash proceeds of any Incremental Facility shall be excluded from any calculation of “net” Indebtedness in determining whether such Incremental Facility can be incurred (*provided* that the use of proceeds thereof and any other Pro Forma Adjustments shall be included) and (c) the incurrence (including by assumption or guarantee) or repayment of any Indebtedness in respect of the Revolving Credit Facility (and/or any Incremental Revolving Facility and any other revolving facilities included in such calculation) prior to, or simultaneously with, the event for which the Pro Forma Compliance determination of such ratio or other test is being made shall be disregarded.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Credit Loans and Incremental Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the applicable Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not consistent with the Initial Term Loans or Revolving Credit Commitments, as applicable, each existing on the Incremental Facility Closing Date, shall be reasonably satisfactory to Administrative Agent (except for covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of such Incremental Amendment) (it being understood that to the extent any financial maintenance covenant is added for the benefit of (A) Incremental Term Loans and Incremental Term Commitments, no consent shall be required from the Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant is also added for the benefit of each Facility remaining outstanding after the effectiveness of such Incremental Amendment or (B) Incremental Revolving Credit Loans and Incremental Revolving Credit Commitments, no consent shall be required from the Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant is also added for the benefit of the Revolving Credit Facility that then benefits from a financial maintenance covenant and is remaining outstanding after the effectiveness of such Incremental Amendment). In any event:

(i) the Incremental Term Loans:

(A) shall not mature earlier than the Maturity Date of the Initial Term Loans or the Revolving Credit Commitments; *provided* that Incremental Term Loans (1) incurred for purposes of consummating a Permitted Acquisition or other Investment not prohibited hereunder constituting customary bridge facilities, so long as the long-term Indebtedness into which such customary bridge facilities are to be converted or exchanged satisfies the requirements of this clause (A) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges shall not be subject to the foregoing requirement or (2) constituting Term A Loans or other customary term loan A facilities (as determined by the Lead Borrower in good faith) shall only be required to not mature earlier than the Maturity Date of the Initial Term A Loans,

(B) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Term Loans or Revolving Credit Commitments; *provided* that Incremental Term Loans (1) incurred for purposes of consummating a Permitted Acquisition or other Investment not prohibited hereunder constituting customary bridge facilities, so long as the long-term Indebtedness into which such customary bridge facilities are to be converted or exchanged satisfies the requirements of this clause (B) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges shall not be subject to the foregoing requirement or (2) constituting Term A Loans or other customary term loan A facilities (as determined by the Lead Borrower in good faith), in each case, shall only require that the remaining Weighted Average Life to Maturity not be shorter than the remaining Weighted Average Life to Maturity of the Initial Term A Loans,

(C) subject to clauses (e)(i)(A) and (e)(i)(B) above and clause (e)(iii) below, shall have an Applicable Rate and amortization determined by the Lead Borrower and the applicable Incremental Term Lenders,

(D) the Incremental Term Loans may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments of Term Loans

hereunder, as specified in the applicable Incremental Amendment; *provided* that the Borrowers shall be permitted to prepay any Class of Term Loans on a better than a pro rata basis as compared to any other Class of Term Loans with a later maturity date than such Class; and

(E) (x) shall have no borrower or guarantor in respect of such Incremental Term Loans that is not a Borrower or a Guarantor hereunder and (y) shall not be secured by any assets that do not constitute Collateral;

(ii) the Incremental Revolving Credit Commitments and Incremental Revolving Credit Loans shall be identical to the Revolving Credit Commitments and the Revolving Credit Loans, other than the Maturity Date and as set forth in this Section 2.14(e)(ii); *provided* that notwithstanding anything to the contrary in this Section 2.14 or otherwise:

(A) any such Incremental Revolving Credit Commitments or Incremental Revolving Credit Loans shall not mature or provide for mandatory commitment reductions earlier than the Latest Maturity Date of any Revolving Credit Commitments outstanding at the time of incurrence of such Incremental Revolving Credit Commitments,

(B) the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Credit Commitments (and related outstandings), (2) repayments required upon the maturity date of the Incremental Revolving Credit Commitments and (3) repayments made in connection with a permanent repayment and termination of commitments (subject to clause (D) below)) of Loans with respect to Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis (or, in the case of repayment, on a pro rata basis or less than a pro rata basis) with all other Revolving Credit Commitments on the Incremental Facility Closing Date,

(C) subject to the provisions of Sections 2.03(n) and 2.04(g) to the extent dealing with Swing Line Loans and Letters of Credit which mature or expire after a maturity date when there exists Incremental Revolving Credit Commitments with a longer maturity date, all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Commitments in accordance with their percentage of the Revolving Credit Commitments on the Incremental Facility Closing Date (and except as provided in Section 2.03(n) and Section 2.04(g), without giving effect to changes thereto on an earlier maturity date with respect to Swing Line Loans and Letters of Credit theretofore incurred or issued),

(D) the permanent repayment of Revolving Credit Loans with respect to, and termination of, Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) with all other Revolving Credit Commitments on the Incremental Facility Closing Date, except that the Borrowers shall be permitted to permanently repay and terminate commitments of any such Class on a better than a pro rata basis as compared to any other Class with a later maturity date than such Class,

(E) assignments and participations of Incremental Revolving Credit Commitments and Incremental Revolving Credit Loans shall be governed by the same assignment and participation provisions

applicable to Revolving Credit Commitments and Revolving Credit Loans on the Incremental Facility Closing Date,

(F) any Incremental Revolving Credit Commitments may constitute a separate Class or Classes, as the case may be, of Commitments from the Classes constituting the applicable Revolving Credit Commitments prior to the Incremental Facility Closing Date;

(G) any such Incremental Revolving Credit Commitments or Incremental Revolving Credit Loans (x) shall have no borrower or guarantor that is not a Borrower or a Guarantor hereunder and (y) shall not be secured by any assets that do not constitute Collateral; and

(iii) the amortization schedule applicable to any Incremental Term Loans and the All-In Yield applicable to the Incremental Term Loans or Incremental Revolving Credit Loans of each Class shall be determined by the Borrowers and the applicable Lenders providing such Incremental Term Loans or Incremental Revolving Credit Commitments and shall be set forth in each applicable Incremental Amendment; *provided, however*, if the All-In Yield applicable to any floating-rate Incremental Term Loans (other than Incremental Term Loans that constitute MFN Excluded Loans) shall be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Initial Term B Loans by more than 50 basis points per annum (the amount of such excess of the All-In Yield applicable to such Incremental Term Loans over the sum of the All-In Yield applicable to the Initial Term B Loans *plus* 50 basis points per annum, the “**Yield Differential**”) then the interest rate (together with the Eurocurrency Rate or Base Rate floor, as applicable) with respect to the applicable Initial Term B Loans shall be increased by the applicable Yield Differential (this proviso, the “**MFN Protection**”); *provided further* that notwithstanding the foregoing, the MFN Protection shall not apply to Incremental Terms Loans consisting of customary bridge facilities, Term A Loans or any other customary term loan A facilities (as determined by the Lead Borrower in good faith).

(f) *Incremental Amendment.* Commitments in respect of Incremental Term Loans and Incremental Revolving Credit Commitment shall become Commitments under this Agreement pursuant to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrowers, any Loan Party organized under the laws of the United States, any state thereof or the District of Columbia, that may be designated as a borrower in respect thereof (if any), each Incremental Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, 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 and the Borrowers, to effect the provisions of this Section 2.14. The Borrowers (or any Loan Party organized under the laws of the United States, any state thereof or the District of Columbia, that may be designated as a borrower in respect thereof) will use the proceeds of the Incremental Term Loans and Incremental Revolving Credit Commitments for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Term Loans or Incremental Revolving Credit Commitments, unless it so agrees.

(g) *Reallocation of Revolving Credit Exposure.* Upon any Incremental Facility Closing Date on which Incremental Revolving Credit Commitments are effected through an increase in the Revolving Credit Commitments pursuant to this Section 2.14, (a) if the increase relates to the Revolving Credit Facility, each of the Revolving Credit Lenders shall assign to each of the Incremental Revolving Credit Lenders, and each of the Incremental Revolving Credit Lenders shall purchase from each of the Revolving Credit Lenders, at the principal amount thereof, such interests in the Incremental Revolving Credit Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans will be held by existing Revolving Credit Lenders and Incremental Revolving Credit Lenders ratably in accordance with their Revolving Credit Commitments after giving effect to the addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments, (b) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Credit Loan and (c) each Incremental Revolving Credit Lender shall become a Lender with respect to the Incremental Revolving Credit Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Sections 2.02 and 2.05(a) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(h) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

(i) Notwithstanding the foregoing, Incremental Term Facilities and Incremental Revolving Facilities may be established and incurred as a means of effectively extending the maturity or effecting a repricing or a refinancing, in whole or in part, without utilizing any of the Available Incremental Amount, without regard to

whether an Event of Default has occurred and is continuing and, without regard to the minimums set forth in Section 2.14(d)(iv), to the extent that the net cash proceeds from the Incremental Term Loans and Incremental Revolving Credit Loans, as applicable, are used to either (x) prepay Term Loans or (y) permanently reduce the Revolving Credit Commitments, Extended Revolving Credit Commitments or Incremental Revolving Credit Commitments; *provided* that (i) the Lenders with respect to any Class of Loans or Commitments being prepaid are offered the opportunity to participate in such transaction on a pro rata basis (and on the same terms) and (ii) the aggregate principal amount of such Class of Loans or Commitments, as the case may be, does not exceed the sum of (A) the aggregate principal amount of the applicable Class of Loans or Commitments being prepaid, extended, repriced or refinanced, (B) fees and expenses associated with the such prepayment (including any prepayment premium, penalties or other call protection) and (C) fees and expenses (including any OID, upfront fees, commitment fees, amendment fees, arrangement fees, underwriting fees or other fees) related to the establishment and incurrence of such Incremental Term Facilities and Incremental Revolving Facilities, as applicable.

Section 2.15. *Refinancing Amendments.*

(a) On one or more occasions after the Closing Date, the Borrowers may obtain, from any Lender or any other bank, financial institution or other institutional lender or investor that agrees to provide any portion of Refinancing Term Loans or Other Revolving Credit Commitments pursuant to a Refinancing Amendment in accordance with this Section 2.15 (each, an “**Additional Refinancing Lender**”) (*provided* that (i) solely with respect to Other Revolving Credit Commitments, the Administrative Agent, each Swing Line Lender and each L/C Issuer, if applicable, shall have consented (not to be unreasonably withheld or delayed) to such Lender’s or Additional Refinancing Lender’s providing such Other Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Revolving Credit Commitments to such Lender or Additional Refinancing Lender, (ii) with respect to Refinancing Term Loans, any Affiliated Lender providing Refinancing Term Loans shall be subject to the same restrictions set forth in Section 10.07(l) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Other Revolving Credit Commitments), Credit Agreement Refinancing Indebtedness in respect of all or any portion of any Class, as selected by the Borrowers in their sole discretion, of Term Loans or Revolving Credit Loans (or unused Commitments in respect thereof) then outstanding under this Agreement, in the form of Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Credit Commitments, or Other Revolving Credit Loans pursuant to a Refinancing Amendment; *provided* that notwithstanding anything to the contrary in this Section 2.15 or otherwise, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Credit Commitments (and related outstandings), (B) repayments required upon the maturity date of the Other Revolving Credit Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (3) below)) of Loans with respect to Other Revolving Credit Commitments after the date of obtaining any Other Revolving Credit Commitments shall be made on a pro rata basis with all other Revolving Credit Commitments, (2) subject to the provisions of Section 2.03(n) and Section 2.04(g) to the extent dealing with Swing Line Loans and Letters of Credit which mature or expire after a maturity date when there exist Other Revolving Credit Commitments with a longer maturity date, all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Commitments in accordance with their percentage of the Commitments in respect of Revolving Credit Loans (and except as provided in Section 2.03(n) and Section 2.04(g), without giving effect to changes thereto on an earlier maturity date with respect to Swing Line Loans and Letters of Credit theretofore incurred or issued), (3) the permanent repayment of Revolving Credit Loans with respect to, and termination of, Other Revolving Credit Commitments after the date of obtaining any Other Revolving Credit Commitments shall be made on a pro rata basis with all other Commitments in respect of Revolving Credit Loans, except that the Borrowers shall be permitted to permanently repay and terminate commitments of any such Class on a better than a pro rata basis as compared to any other Class with a later maturity date than such Class and (4) assignments and participations of Other

Revolving Credit Commitments and Other Revolving Credit Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans.

(b) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date other than changes to such legal opinion



resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Credit Agreement Refinancing Indebtedness is provided with the benefit of the applicable Loan Documents.

(c) Each issuance of Credit Agreement Refinancing Indebtedness under Section 2.15(a) shall be in an aggregate principal amount that is (x) not less than \$10,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof.

(d) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the third paragraph of Section 10.01 (without the consent of the Required Lenders called for therein) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.15, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment.

(e) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16. *Extension of Term Loans; Extension of Revolving Credit Loans.*

(a) *Extension of Term Loans.* The Borrowers may at any time and from time to time, in their sole discretion, request that all or a portion of the Term Loans of a given Class (or series or tranche thereof) (each, an “**Existing Term Loan Tranche**”) be amended to extend the scheduled maturity date(s) with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so amended, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Term Loans, the applicable Borrower(s) shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Term Loan Tranche and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment; (ii) the Effective Yield with respect to the Extended Term Loans may be different than the Effective Yield for the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and (iv) Extended Term Loans may have prepayment premiums or call protection as may be agreed by applicable Borrower(s) and the Lenders thereof; *provided* that no Extended Term Loans may be optionally prepaid prior to the date on which the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans were amended are repaid in full, unless such optional prepayment is accompanied by at least a pro rata optional prepayment of such Existing Term Loan Tranche; *provided, further*, that (A) in no event shall the final maturity date of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any Existing Term Loan Tranche hereunder, (B) the Weighted Average Life to Maturity of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof shall be no shorter (other than by virtue of amortization or prepayment of such Indebtedness prior to the time of incurrence of such Extended Term Loans) than the remaining Weighted Average Life to Maturity of the applicable Existing Term Loan Tranche, (C) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (D) any Extended Term Loans may participate on a pro rata basis or less than a pro rata

basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments hereunder, in each case as specified in the respective Term Loan Extension Request. Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall

be designated a series (each, a “**Term Loan Extension Series**”) of Extended Term Loans for all purposes of this Agreement; *provided* that any Extended Term Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Tranche. Each Term Loan Extension Series of Extended Term Loans incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000.

(b) *Extension of Revolving Credit Commitments.* The Borrowers may at any time and from time to time, in their sole discretion, request that all or a portion of the Revolving Credit Commitments or Incremental Revolving Credit Commitments of a given Class (or series or tranche thereof) (each, an “**Existing Revolver Tranche**”) be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Revolving Credit Commitments or Incremental Revolving Credit Commitments (any such Revolving Credit Commitments or Incremental Revolving Credit Commitments which have been so amended, “**Extended Revolving Credit Commitments**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Revolving Credit Commitments, the applicable Borrower(s) shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a “**Revolver Extension Request**”) setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Credit Commitments under the Existing Revolver Tranche from which such Extended Revolving Credit Commitments are to be amended, except that: (i) the Maturity Date of the Extended Revolving Credit Commitments may be delayed to a later date than the Maturity Date of the Revolving Credit Commitments of such Existing Revolver Tranche, to the extent provided in the applicable Extension Amendment; (ii) the Effective Yield with respect to extensions of credit under the Extended Revolving Credit Commitments (whether in the form of interest rate margin, upfront fees, commitment fees, OID or otherwise) may be different than the Effective Yield for extensions of credit under the Revolving Credit Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Credit Commitments); and (iv) all borrowings under the applicable Revolving Credit Commitments (*i.e.*, the Existing Revolver Tranche and the Extended Revolving Credit Commitments of the applicable Revolver Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings) and (II) repayments required upon the Maturity Date of the non-extending Revolving Credit Commitments); *provided, further*, that (A) in no event shall the final maturity date of any Extended Revolving Credit Commitments of a given Revolver Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Credit Commitments hereunder and (B) all documentation in respect of such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Credit Commitments amended pursuant to any Revolver Extension Request shall be designated a series (each, a “**Revolver Extension Series**”) of Extended Revolving Credit Commitments for all purposes of this Agreement; *provided* that any Extended Revolving Credit Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolver Extension Series with respect to such Existing Revolver Tranche. Each Revolver Extension Series of Extended Revolving Credit Commitments incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$5,000,000.

(c) *Extension Request.* The Borrowers shall provide the applicable Extension Request at least three

(3) Business Days prior to the date on which Lenders under the Existing Term Loan Tranche or Existing Revolver Tranche, as applicable, are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche amended into Extended Term Loans or any of its Revolving Credit Commitments amended into Extended Revolving Credit Commitments, as applicable, pursuant to any Extension Request. Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Extension Request amended into Extended Term Loans and any Revolving Credit Lender (each, an “**Extending Revolving Credit Lender**”) wishing to have

all or a portion of its Revolving Credit Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Revolving Credit Commitments, as applicable, shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, which it has elected to request be amended into Extended Term Loans or Extended Revolving Credit Commitments, as applicable (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, in respect of which applicable Term Lenders or Revolving Credit Lenders, as the case may be, shall have accepted the relevant Extension Request exceeds the amount of Extended Term Loans or Extended Revolving Credit Commitments, as applicable, requested to be extended pursuant to the Extension Request, Term Loans or Revolving Credit Commitments, as applicable, subject to Extension Elections shall be amended to Extended Term Loans or Revolving Credit Commitments, as applicable, on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Term Loans or Revolving Credit Commitments, as applicable, included in each such Extension Election.

(d) *Extension Amendment.* Extended Term Loans and Extended Revolving Credit Commitments shall be established pursuant to an amendment (each, an “**Extension Amendment**”) to this Agreement among the Borrowers, the Administrative Agent and each Extending Term Lender or Extending Revolving Credit Lender, as applicable, providing an Extended Term Loan or Extended Revolving Credit Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.16(a) or (b) above, respectively (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02(i) and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, are provided with the benefit of the applicable Loan Documents. The Borrowers may, at their election, specify as a condition to consummating any Extension Amendment that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrowers’ sole discretion and as may be waived by the Borrowers) of Term Loans, Revolving Credit Commitments or Incremental Revolving Credit Commitments (as applicable) of any or all applicable Classes be tendered. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment.

Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, (iv) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the second paragraph of Section 10.01 (without the consent of the Required Lenders called for therein) and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(f) This Section 2.16 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.17. *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 10.01.

(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 8 or otherwise), 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 L/C Issuers or Swing Line Lender hereunder; third, if so determined by the Administrative Agent or requested by any 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, as the Borrowers may request (so long as no Default or Event of Default has occurred and is continuing), 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 Issuers or the Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or the 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 has occurred and is continuing, 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 2.17(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 Pro Rata Share 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 Pro Rata Share of each Non-Defaulting Lender's Revolving Credit Loans and L/C Obligations 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 has occurred and is continuing; 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



Revolving Credit Commitment of that Non-Defaulting Lender *minus* (2) the aggregate Outstanding Amount of the Loans of that Lender. 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. If the allocation described in this clause (iv) cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures satisfactory to such L/C Issuer (in its sole discretion).

(b) *Defaulting Lender Cure.* If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuers 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 Revolving Credit 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 Pro Rata Share (without giving effect to Section 2.17(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.

### ARTICLE 3

#### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

##### Section 3.01. *Taxes.*

(a) Except as provided in this Section 3.01, all payments made by or on account of any Borrower (the term Borrower under this Article 3 being deemed to include any Subsidiary for whose account a Letter of Credit is issued) or any Guarantor under any Loan Document shall be made free and clear of and without deduction for all present or future taxes, duties, levies, imposts, assessments or withholdings (including backup withholding) or similar charges imposed by any Governmental Authority including interest, penalties and additions to tax (collectively "Taxes"), except as required by applicable Law. If any Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (A) to the extent the Tax in question is an Indemnified Tax, the sum payable by such Borrower or such Guarantor shall be increased as necessary so that after all required deductions have been made by any applicable withholding agent (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of payments made to an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (B) the applicable withholding agent shall make such deductions, (C) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (D) as soon as practicable after the date of such payment, if any Borrower or any Guarantor is the applicable withholding agent, such Borrower or such Guarantor, as applicable, shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence reasonably satisfactory to such Agent or Lender.

(b) In addition, the applicable Borrower agrees to pay all present or future stamp, court or documentary, intangible, recording, filing, or similar Taxes, imposed by any Governmental Authority, that arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, such amounts that result from an Agent or Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments

under any Loan Document (collectively, “**Assignment Taxes**”) to the extent such Assignment Taxes result from a connection that the assignor and/or the assignee has with the taxing jurisdiction other than a connection arising out of the Loan Documents or the

transactions therein, except for such Assignment Taxes resulting from an assignment, participation or change in Lending Office that is requested or required in writing by the applicable Borrower (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as “**Other Taxes**”).

(c) The applicable Borrower agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender and (ii) any reasonable expenses arising therefrom or with respect thereto, in each case 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 prepared in good faith by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error.

(d) Each Lender shall, at such times as are reasonably requested by the Lead Borrower or the Administrative Agent, provide the Lead Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Lead Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Lead Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation expired, obsolete or inaccurate in any respect, deliver promptly to the Lead Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Lead Borrower or the Administrative Agent) or promptly notify the Lead Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Lead Borrower, the Administrative Agent or other applicable withholding agent may withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this

Section 3.01(d), a Lender shall not be required to deliver any documentation pursuant to this Section 3.01(d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(A) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Lead Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent) two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax.

(B) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Lead Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent) whichever of the following is applicable:

(I) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(II) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(III) a United States Tax Compliance Certificate in the form of Exhibit M claiming the benefits of the exemption for portfolio interest under Section 881(c) or 871(h) of the Code, and

two properly completed and duly signed original copies of Internal Revenue Service Form W- 8BEN or W-8BEN-E (or any successor form);

(IV) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and/or any other required information from each beneficial owner, as applicable and to the extent required under this Section 3.01(d) as if such beneficial owner were a Lender hereunder (*provided* that if the Lender is a partnership and not a participating Lender, and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such direct and indirect partner(s)); or

(V) to the extent it is legally eligible to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Lead Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(C) Without limiting the provisions of clause (A), (B) or (D) of this Section 3.01(d), if a payment made to a Lender under any Loan Document would be subject to 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 Lead Borrower or the Administrative Agent as may be necessary for the Lead Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(d)(C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(D) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(d).

(e) Any Lender claiming any additional amounts payable pursuant to this Section 3.01 or Section 3.04(a) shall, if requested by the Lead Borrower, use its reasonable efforts to change the jurisdiction of its Lending Office (or take any other measures reasonably requested by the Lead Borrower) if such a change or other measures would reduce any such additional amounts (including any such additional amounts that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent receives a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by any Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by such Loan Party under this Section 3.01 with respect to Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, 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 Loan Party, upon the request of the

Lender or Agent, as the case may be, shall promptly return such refund (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to

such Lender or Agent in the event such Lender or Agent is required to repay such refund to the relevant Governmental Authority. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Lead Borrower or any other person.

(g) The Administrative Agent and each Supplemental Agent, if any, shall deliver to the Lead Borrower, on or prior to the Closing Date (or, in the case of a Supplemental Agent or a successor Administrative Agent pursuant to Section 9.09 hereof, on or before the date on which it becomes a Supplemental Agent or the Administrative Agent, as applicable), a properly completed and executed Internal Revenue Service Form W-8IMY (indicating “Qualified Intermediary” or U.S. branch status) or Internal Revenue Service Form W-9, as applicable; provided that no Administrative Agent or Supplemental Agent shall be required to provide any documentation under this Section 3.01(g) that such person is legally ineligible to deliver as a result of a change in Law after the date hereof.

(h) For the avoidance of doubt, the term “**Lender**” for purposes of this Section 3.01 shall include each L/C Issuer and Swing Line Lender and the term “**applicable Law**” shall include FATCA.

(i) Each party’s obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.02. *Illegality.* If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans (whether denominated in Dollars or any other Approved Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies, or, in the case of Eurocurrency Rate Loans denominated in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist.

Upon receipt of such notice, the applicable Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans, 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 promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the applicable Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. *Inability to Determine Rates.*

(a) If in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) deposits in the relevant Approved Currency are not being offered to banks in the London interbank Eurocurrency market for the applicable amount and Interest Period of such Eurocurrency Rate Loan, or (B) (x) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Approved Currency and Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan and (y) the circumstances described in Section 3.03(c)(i) and 3.03(d) do not apply (in each case with respect to this clause

(i), “Impacted Loans”), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurocurrency Rate for any Approved Currency and requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, 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) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a



determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice. 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, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent, in consultation with the Lead Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Lead Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Lead Borrower written notice thereof. The Administrative Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of the establishment of an alternative interest rate pursuant to this clause (b).

(c) Dollar Denominated Successor Rate: Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12- month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); *provided* that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (1) of the definition of Benchmark Replacement unless the Administrative Agent determines that neither of such alternative rates is available.

(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(iii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor

for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Lead Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Lead Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(iv) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(v) The Administrative Agent will promptly notify the Lead Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(d) Non-Dollar Denominated Successor Rate: Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the 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 Approved Foreign 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 administrator for the Relevant Rate for such Approved Foreign Currency or any Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which all tenors of the Relevant Rate for an Approved Foreign 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 Approved Foreign 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 Approved Foreign Currency (the latest date on which all tenors of the Relevant Rate for such Approved Foreign Currency (including any forward-looking term rate thereof) are no longer representative or available permanently or indefinitely, the “**Scheduled Unavailability Date**”); or

(iii) syndicated loans currently being executed and agented in the U.S., are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Approved Foreign Currency;

or if the events or circumstances of the type described in Section 3.03(d)(i), (ii) or (iii) have occurred with respect to the Successor Rate then in effect, then, the Administrative Agent and the Lead Borrower may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Approved Foreign Currency or any then current Successor Rate for an Approved Foreign Currency in accordance with this Section 3.03 with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in such Approved Foreign 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 U.S. and denominated in such Approved Foreign 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 “**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 Revolving Credit Lenders have delivered to the Administrative Agent written notice that such Required Revolving Credit Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined (i) in the case of the Revolving Credit Commitments, would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents and (ii) in the case of Term Loans, would otherwise be less than 0.50%, the Successor Rate will be deemed to be 0.50% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Lead Borrower and the Lenders reasonably promptly after such amendment becomes effective.

Section 3.04. *Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurocurrency Rate Loans.*

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender’s compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes, or any Taxes excluded from the definition of Indemnified Taxes under exceptions (i) through (vi) thereof or (ii) reserve requirements contemplated by Section 3.04(c)) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Eurocurrency Rate Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such

demand to the Administrative Agent given in accordance with Section 3.06), the applicable Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction. Notwithstanding anything herein to the contrary, for all purposes under this Agreement, (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.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any Person controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy or liquidity and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the applicable Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction after receipt of such demand.

(c) The applicable Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves, capital or liquidity with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the applicable Borrower equal to the actual costs of such reserves, capital or liquidity allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio, capital or liquidity requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the applicable Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan; *provided* the applicable Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Lead Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided, further*, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrowers or the rights of such Lender pursuant to Sections 3.04(a), (b), (c) or (d).

(f) Notwithstanding anything set forth in clauses (a) through (c) above, any Lender shall be compensated pursuant to this Section 3.04 only if such Lender certifies that it imposes such costs or charges under other syndicated credit facilities involving similarly situated borrowers that such Lender is a lender under.

Section 3.05. *Funding Losses*. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, the applicable Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the applicable Borrower on a day prior to the last day of the Interest Period for such Loan;

(b) any failure by the applicable Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of such Borrower on the date or in the amount notified by the applicable Borrower, including any loss or expense (excluding loss



of anticipated profits) 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; or

(c) any failure by the applicable Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Approved Foreign Currency on its scheduled due date or any payment thereof in a different currency.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, 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 offshore interbank market for the applicable currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded; *provided*, that in the case of Section 3.05(a), if any such Eurocurrency Rate Loan has an Eurocurrency Rate floor, any amount owing by the applicable Borrower to the Lender shall be reduced by the amount of interest income accrued during the completed portion of the Interest Period at a rate equal to the Eurocurrency Rate floor over the applicable Eurocurrency Rate for such Interest Period.

Section 3.06. *Matters Applicable to All Requests for Compensation.*

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Lead Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Sections 3.01, 3.02, 3.03 or 3.04, the applicable Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the applicable Borrower of the event that gives rise to such claim; *provided* that if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the applicable Borrower under Section 3.04, the applicable Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another applicable Eurocurrency Rate Loan, or, if applicable, to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Sections 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrowers (with a copy to the Administrative Agent) that the circumstances specified in Sections 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly

upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

Section 3.07. *Replacement of Lenders under Certain Circumstances.*

(a) If at any time (i) the applicable Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 (with respect to Indemnified Taxes or Other Taxes) or Section 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the applicable Borrower, may so long as no Event of Default has occurred and is continuing, at its sole cost and expense, on three (3) Business Days' prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the applicable Borrower in such instance) all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or (ii) or, with respect to a Class vote, clause (iii) above) to one or more Eligible Assignees (or with respect to any assignment to any Affiliated Lender, pursuant to Section 10.07(l)); *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the applicable Borrower to find a replacement Lender or other such Person; and *provided, further*, that (A) 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 (with respect to Indemnified Taxes or Other Taxes), such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender or L/C Issuer (in respect of any applicable Facility only in the case of clauses (i) through (iii)), as the case may be, and (1) in the case of a Lender (other than an L/C Issuer), repay all Obligations of the applicable Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date and (2) in the case of an L/C Issuer, repay all Obligations of the applicable Borrower owing to such L/C Issuer relating to the Loans and participations held by the L/C Issuer as well as all Letters of Credit issued by such L/C Issuer as of such termination date and cancel or backstop on terms satisfactory to such L/C Issuer any Letters of Credit issued by it; *provided* that in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable Facility only in the case of clause (i) or (ii) or, with respect to a Class vote, clause (iii).

(b) Any Lender being replaced pursuant to Section 3.07(a)(x) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans in respect thereof, and (ii) deliver any Notes evidencing such Loans to the applicable Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, (B) all obligations of the applicable Borrower owing to the assigning Lender relating to the Loans, Commitments and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender,

delivery to the assignee Lender of the appropriate Note or Notes executed by the applicable Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement on the date of which the assignee Lender executes and delivers such Assignment and Assumption to such Non-Consenting Lender or Defaulting Lender, then such Non-

Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

(c) Notwithstanding anything to the contrary contained above, any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a backup standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.09.

(d) In the event that (i) the Lead Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, each affected Lender or each affected Lender of a certain Class in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders as applicable) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

Section 3.08. *Survival.* Each party’s obligations under this Article 3 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### ARTICLE 4

##### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions to Initial Credit Extension.* The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Lead Borrower and the Administrative Agent:

(a) The Administrative Agent’s receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

- (i) executed counterparts of this Agreement;
- (ii) the Closing Date Intercreditor Agreement, duly executed by each party thereto;
- (iii) each Collateral Document set forth on Schedule 1.01B required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party thereto, together with:

(A) certificates, if any, representing the Pledged Equity in the Lead Borrower and in each wholly owned Domestic Subsidiary of the Lead Borrower accompanied by undated stock or membership interest powers executed in blank and instruments evidencing the Pledged Debt (including the Intercompany Note) indorsed in blank (or confirmation in lieu thereof reasonably satisfactory to the Administrative Agent or its counsel that such certificates, powers and instruments have been sent for overnight delivery to the Collateral Agent or its counsel);

(B) copies of proper financing statements, filed or duly prepared for filing under the Uniform Commercial Code in all United States jurisdictions that the

Administrative Agent may deem reasonably necessary in order to perfect and protect the Liens created under the Security Agreement on assets of the Lead Borrower and each Subsidiary Guarantor that is party to the Security Agreement, covering the Collateral described in the Security Agreement; and

(C) evidence that all other actions, recordings and filings required by the Collateral Documents as of the Closing Date or that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent (it being understood that no insurance certificate, including evidence of flood insurance, shall be required to be delivered on or prior to the Closing Date);

(iv) subject to Section 6.16, all actions necessary to cause the Collateral Agent to have a perfected first priority security interest in the Collateral (subject to Liens permitted under Section 7.01 which by operation of law or contract would have priority over the Liens securing the Obligations) shall have been taken;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization or registrar of companies in the jurisdiction of incorporation or registration, as applicable, of each Loan Party, certificates of resolutions or other action, incumbency certificates, certificates of incorporation and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) (w) an opinion from Paul, Weiss, Rifkind, Wharton & Garrison LLP, special counsel to the Loan Parties, (x) an opinion from Garman Turner Gordon, (y) an opinion from Holland & Knight and (z) an opinion from Loyens & Loeff N.V.;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer or director with equivalent duties of the Lead Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit E-2 (or, at the sole option and discretion of the Lead Borrower, a third-party opinion as to the solvency of the Lead Borrower and its Subsidiaries on a consolidated basis issued by a nationally recognized firm);

(viii) a certificate, dated the Closing Date and signed by a Responsible Officer of the Lead Borrower, confirming satisfaction of the conditions set forth in Sections 4.02(i) and (ii); and

(ix) the Perfection Certificate, duly completed and executed by the Loan Parties.

(b) The Closing Fees and all fees and expenses due to the Lead Arrangers and their Affiliates required to be paid on the Closing Date and (in the case of expenses) invoiced at least three (3) Business Days before the Closing Date (except as otherwise reasonably agreed by the Lead Borrower) shall have been paid from the proceeds of the initial funding under the Facilities.

(c) [Reserved].

(d) [Reserved].

(e) The Administrative Agent shall have received at least 3 Business Days prior to the Closing Date all documentation and other information about the Borrowers and the Guarantors required under applicable “**know your customer**” and anti-money laundering rules and regulations, including the USA PATRIOT Act that has been requested by the Administrative Agent in writing at least 10 Business



Days prior to the Closing Date. If a Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, such Borrower shall have delivered to the Administrative Agent, at least 3 Business Days prior to the Closing Date, a Beneficial Ownership Certification to the extent requested by the Administrative Agent at least 10 Business Days prior to the Closing Date.

Without limiting the generality of the provisions of Section 9.03(b), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02. *Conditions to All Credit Extensions.* 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 and other than a Request for Credit Extension in connection with an Incremental Amendment, which shall be governed by Section 2.14(d)), is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects as so qualified) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(iii) The Administrative Agent and, if applicable, the relevant 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 a Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) (or, in the case of a Request for Credit Extension in connection with an Incremental Amendment, the conditions specified in Section 2.14(d)) have been satisfied on and as of the date of the applicable Credit Extension.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Each of the Borrowers represents and warrants to the Agents and the Lenders at the time of each Credit Extension that:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws.* Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized, registered, incorporated or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation, registration or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its

business as currently conducted; except in each case, referred to in clause (a) (other than with respect to Holdings or the Borrowers), (b)(i) (other than with respect to Holdings or the Borrowers), (c), (d) and (e), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 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 are within such Loan Party's corporate or other powers, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organizational Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) 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 (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) violate any applicable Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(ii) and (b)(iii) above, to the extent that such violation, conflict, breach, contravention or payment would not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents.* No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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 Transactions, (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 priority 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) filings, recordings and registrations with Governmental Authorities necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or be in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

Section 5.04. *Execution, Delivery and Enforceability.* This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity, (ii) the need for filings, recordations and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges, if any, of Equity Interests in Foreign Subsidiaries.

Section 5.05. *Financial Statements; No Material Adverse Effect.*

(a) The Audited Financial Statements and Unaudited Financial Statements fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the dates thereof and their results of operations for the periods covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The forecasts of consolidated balance sheets and consolidated statements of income and cash flow of the Lead Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the

time of preparation of such forecasts, it being understood that actual results may vary from such forecasts and that such variations may be material.

(c) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, none of the Lead Borrower and its Subsidiaries has any Indebtedness or other obligations or liabilities, direct or contingent (other than (i) the liabilities reflected on Schedule 5.05, (ii) obligations arising under the Loan Documents or under the Senior Secured Notes Documents and (iii) liabilities

incurred in the ordinary course of business that, either individually or in the aggregate, have not had nor would reasonably be expected to have a Material Adverse Effect).

Section 5.06. *Litigation.* Except as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Lead Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Lead Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.07. *Ownership of Property; Liens; Real Property.*

(a) The Lead Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property owned or leased by the Lead Borrower or each of its Restricted Subsidiaries, as applicable, which is necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Closing Date, Schedule 2(b) to the Perfection Certificate dated as of the Closing Date contains a true and complete list of each Material Real Property owned by the Lead Borrower or any of its Restricted Subsidiaries.

Section 5.08. *Environmental Matters.* Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) the Lead Borrower and its Restricted Subsidiaries and their respective properties and operations are and, other than any matters which have been finally resolved without further liability or obligation, have been in compliance with all Environmental Laws, which includes obtaining, maintaining and complying with all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Lead Borrower and its Restricted Subsidiaries;

(b) none of the Lead Borrower or its Restricted Subsidiaries have received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Lead Borrower or its Restricted Subsidiaries nor any of the Real Property owned, leased or operated by the Lead Borrower or its Restricted Subsidiaries is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Lead Borrower, threatened, under or relating to any Environmental Law;

(c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities currently or formerly owned, leased or operated by the Lead Borrower or its Restricted Subsidiaries, or arising out of the conduct of the Lead Borrower or its Restricted Subsidiaries, in each case that would reasonably be expected to require investigation, remedial activity, corrective action or cleanup by, or on behalf of, the Lead Borrower or its Restricted Subsidiaries or would reasonably be expected to result in any Environmental Liability;

(d) there are no facts, circumstances or conditions arising out of or relating to the Lead Borrower or its Restricted Subsidiaries or any of their respective operations or any facilities currently or, to the knowledge of the Lead Borrower, formerly owned, leased or operated by the Lead Borrower or its Restricted Subsidiaries that would reasonably be expected to result in any Environmental Liability; and

(e) the Lead Borrower has made available to the Administrative Agent all environmental reports, studies, assessments, audits, or other similar documents containing information regarding any Environmental Liability that are in the possession of the Lead Borrower or its Subsidiary.

Section 5.09. *Taxes.* Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Lead Borrower and its Subsidiaries have filed all tax returns required to have been filed, and have paid all Taxes levied or imposed upon them or their properties, that have become due and payable, except those that are being contested in good faith by appropriate proceedings diligently conducted for which appropriate reserves have been established in accordance with GAAP. Except as described on Schedule 5.09, there is no proposed Tax deficiency or assessment known to the Lead Borrower against any of the Lead Borrower or its Restricted Subsidiaries that would, if made, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10. *ERISA Compliance.*

(a) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan maintained by the Lead Borrower, any Restricted Subsidiary or any ERISA Affiliate is in compliance with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder and other federal or state Laws.

(b) (i) No ERISA Event has occurred during the six-year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur; (ii) neither the Lead Borrower, any of its Restricted Subsidiaries, nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) neither the Lead Borrower, any of its Restricted Subsidiaries, nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multiemployer Plan; and (iv) neither the Lead Borrower, any of its Restricted Subsidiaries nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or Section 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) With respect to each Pension Plan, the adjusted funding target attainment percentage (as defined in Section 436 of the Code), as determined by the applicable Pension Plan's Enrolled Actuary under Sections 436(j) and 430(d)(2) of the Code and all applicable regulatory guidance promulgated thereunder, would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. Neither the Lead Borrower, any of its Restricted Subsidiaries nor any ERISA Affiliate maintains or contributes to a Plan that is, or is expected to be, in at-risk status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code) in each case, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.11. *Subsidiaries; Equity Interests.* As of the Closing Date (after giving effect to the Transactions), no Loan Party has any Subsidiaries (other than Excluded Subsidiaries pursuant to clause (b) of the definition thereof) other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party in such material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party and (b) set forth the ownership interest of any Guarantor in each wholly owned Subsidiary (other than Excluded Subsidiaries pursuant to clause (b) of the definition thereof), including the percentage of such ownership.

Section 5.12. *Margin Regulations; Investment Company Act.*

(a) (i) None of the Borrowers nor any of their respective Subsidiaries is engaged nor will it engage, principally or as one of its important activities, in the business of (1) purchasing or carrying Margin Stock or (2) extending credit for the purpose of purchasing or carrying Margin Stock, in each case of the foregoing clauses (1) and (2) in a manner that violates Regulation U of the Board of Governors of the United States Federal Reserve System, and (ii) no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.



(b) No Loan Party is required to be registered as an “**investment company**” under the Investment Company Act of 1940.

Section 5.13. *Disclosure.* To the best of the Lead Borrower’s knowledge, no report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information and information of a general economic or industry nature) to any 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 (as modified or supplemented by other information so furnished), when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and pro forma financial information, the Lead Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14. *Labor Matters.* Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes or other labor disputes against the Lead Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Lead Borrower, threatened, (b) hours worked by and payment made to employees of the Lead Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws, (c) the Lead Borrower and the other Loan Parties have complied with all applicable labor Laws including work authorization and immigration and

(d) all payments due from the Lead Borrower or any of its Restricted Subsidiaries on account of employee wages and health and welfare and other benefits insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.15. *Intellectual Property; Licenses, Etc.* The Lead Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses as currently conducted, and, to the knowledge of the Lead Borrower, such IP Rights do not conflict with the rights of any Person, except to the extent such failure to own, license or possess or such conflicts, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Lead Borrower, the business of any Loan Party or any of its Subsidiaries as currently conducted does not infringe upon, misappropriate or otherwise violate any IP Rights held by any Person except for such infringements, misappropriations and violations, individually or in the aggregate, which would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights, is filed and presently pending or, to the knowledge of the Lead Borrower, presently threatened in writing against any Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Except pursuant to licenses and other user agreements entered into by each Loan Party in the ordinary course of business, as of the Closing Date, to the knowledge of the Lead Borrower, all registrations and applications for registration of IP Rights listed in Schedule 7 to the Perfection Certificate are valid and subsisting, except, in each case, to the extent failure of such registrations and applications for registration to be valid and subsisting would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.16. *Solvency.* On the Closing Date, after giving effect to the Transactions, the Lead Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17. *Subordination of Junior Financing.* The Obligations are “**Senior Debt**,” “**Senior Indebtedness**,” “**Guarantor Senior Debt**” or “**Senior Secured Financing**” (or any comparable term) under, and as defined in, any Junior Financing Documentation.



(a) To the extent applicable, each of Holdings, the Lead Borrower and its Restricted Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, the International Emergency Economic Powers Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act.

(b) None of Holdings, the Lead Borrower, nor any of its Subsidiaries nor, to the knowledge of Holdings and the Lead Borrower, any director, officer, employee, agent or controlled affiliate of the Lead Borrower or any of its Subsidiaries is currently the target of any Sanctions, nor is Holdings, the Lead Borrower or any of its Subsidiaries located, organized or resident in any country or territory that is the target of Sanctions.

(c) No part of the proceeds of the Loans will be used, directly or indirectly, by the Borrowers (i) in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or (ii) for the purpose of financing any activities or business of or with any Person or in any country or territory that, at the time of the funding, is the subject of comprehensive Sanctions, or in any other manner that would result in a violation of Sanctions.

#### Section 5.19. *Security Documents.*

(a) *Valid Liens.* Each Collateral Document delivered pursuant to Section 4.01 and Sections 6.11, 6.13 and 6.16 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, and (i) when financing statements and other filings in appropriate form are filed in the offices specified on Schedule 4 to the Perfection Certificate and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), the Liens created by the Collateral Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in (to the extent intended to be created thereby), all right, title and interest of the grantors in such Collateral to the extent perfection can be obtained by filing financing statements or the taking of possession or control, in each case subject to no Liens other than Liens permitted by Section 7.01.

(b) *PTO Filing; Copyright Office Filing.* When the Intellectual Property Security Agreements are properly filed in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, to the extent such filings may perfect such interests, the Liens created by the Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office and Copyrights (as defined in the Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case subject to no Liens other than Liens permitted hereunder (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect the Collateral Agent's Lien on registered Patents, Trademarks and Copyrights (each as defined in the Security Agreement) acquired by the grantors thereof after the Closing Date).

(c) *Mortgages.* Upon recording thereof in the appropriate recording office, each Mortgage is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable perfected Liens on, and security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the

proceeds thereof, subject only to Liens permitted by Section 7.01 and when the Mortgages are filed in the applicable offices (or, in the case of any Mortgage executed and delivered after the date thereof in accordance with the provisions of Sections 6.11, 6.13 and 6.16, when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 6.11, 6.13 and 6.16), such Mortgage shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Mortgaged Property thereunder and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Lead Borrower nor any other Loan Party makes any representation or warranty as to (A) the

effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law) or (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement.

Section 5.20. *Use of Proceeds.* The Borrowers will use the proceeds of the Revolving Facility Loans and Swingline Loans, and may request the issuance of Letters of Credit, solely for general corporate purposes (including, without limitation, for the Transactions, Permitted Acquisitions and other Investments, Capital Expenditures and Transaction Expenses and, in the case of Letters of Credit, for the backstop or replacement of existing letters of credit) and any other purpose not prohibited by this Agreement; and (b) the Borrowers will use the proceeds of the Term Loans made on the Closing Date, together with the proceeds of the Senior Secured Notes, for the Transactions and to fund cash to the Lead Borrower's balance sheet.

Section 5.21. *Insurance.* The properties of the Lead Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductible and covering such risks as are customarily carried by companies engaged in similar businesses as the Lead Borrower and its Restricted Subsidiaries.]

## ARTICLE 6 AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than Treasury Services Obligations, obligations under Secured Hedge Agreements or obligations under Bilateral Letter of Credit Facilities) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer is in place), then from and after the Closing Date, the Lead Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of its Restricted Subsidiaries to:

### Section 6.01. *Financial Statements.*

(a) Deliver to the Administrative Agent for prompt further distribution to each Lender, on or before the date on which such financial statements are required or permitted to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, on or before the date that is within ninety (90) days after the end of the fiscal year after the end of each subsequent fiscal year, a consolidated balance sheet of the Lead Borrower and its Consolidated Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year (and including a management discussion and analysis), all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of any independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not contain any qualifications or exceptions as to the scope of such audit or any "going concern" explanatory paragraph or like qualification (excluding any "emphasis of matter" paragraph) (other than resulting from (w) activities, operations, financial results or liabilities of any Unrestricted Subsidiary, (x) the impending maturity of any Indebtedness or (y) any actual or prospective default under any financial covenant);

(b) Deliver to the Administrative Agent for prompt further distribution to each Lender, on or before the date on which such financial statements are required or permitted to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, on or before the date that is within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Lead Borrower, commencing with the fiscal quarter ending September 30, 2021), an

unaudited consolidated balance sheet of the Lead Borrower and its Consolidated Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income and cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year (and including a management discussion and analysis), all in reasonable detail and certified by a

Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition and results of operations of the Lead Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) Deliver to the Administrative Agent for prompt further distribution to each Lender, no later than ninety (90) days after the end of each subsequent fiscal year, a reasonably detailed consolidated budget for the following fiscal year on a quarterly basis in form customarily prepared by the Lead Borrower (collectively, the “**Projections**”); and

(d) Deliver to the Administrative Agent with each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, supplemental financial information necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 (x) shall, subject to Section 1.03, be prepared in accordance with GAAP and (y) may be satisfied with respect to financial information of the Lead Borrower and the Consolidated Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of the Holdings) or (B) Holdings’ (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that with respect to clauses (A) and (B), (i) to the extent such information relates to a parent of Holdings, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such parent), on the one hand, and the information relating to Holdings, the Lead Borrower and the Consolidated Subsidiaries on a stand-alone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of any independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and, except as permitted in Section 6.01(a), shall not contain any qualifications or exceptions as to the scope of such audit or any “going concern” explanatory paragraph or like qualification.

Documents required to be delivered pursuant to Section 6.01 and Sections 6.02(b) and (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Lead Borrower posts such documents, or provides a link thereto on the website on the Internet at Holdings’ or the Lead Borrower’s website; or (ii) on which such documents are posted on the Lead Borrower’s behalf on IntraLinks or another relevant 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). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

Section 6.02. *Certificates; Other Information.* Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the actual delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower and setting forth the Consolidated First Lien Net Leverage Ratio (and the calculation thereof) as of the most recently ended Test Period;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Lead Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto; *provided* that notwithstanding the foregoing, the obligations in this Section 6.02(b) may be satisfied so long as such information is publicly available on the SEC's EDGAR website;

(c) promptly after the furnishing thereof, copies of any material requests or material notices received by the Lead Borrower (other than in the ordinary course of business) or material statements or



material reports furnished to any holder of debt securities (other than in connection with any board observer rights) of the Lead Borrower or of any of its Restricted Subsidiaries pursuant to the terms of any Senior Secured Notes Documents or any Junior Financing Documentation with a principal amount in excess of the Threshold Amount and, in each case, any Permitted Refinancing thereof, and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.02;

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office or registered office, as applicable, of each Loan Party of the Perfection Certificate or confirming that there has been no change in such information since the later of the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b) and (iii) a list of each Subsidiary of the Lead Borrower that identifies each Subsidiary as a Restricted Subsidiary, an Unrestricted Subsidiary or an Excluded Subsidiary as of the date of delivery of such Compliance Certificate or confirmation that there has been no change in such information since the later of the Closing Date or the date of the last such list; and

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Lead Borrower or any of its Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

The Lead Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Lead Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on Intralinks or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders may be “**public-side**” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Lead Borrower or its securities) (each, a “**Public Lender**”). The Lead Borrower hereby agrees to make all Borrower Materials that the Lead Borrower intends to be made available to Public Lenders clearly and conspicuously designated as “**PUBLIC.**” By designating Borrower Materials as “**PUBLIC,**” the Lead Borrower authorizes such Borrower Materials to be made available to a portion of the Platform designated “**Public Investor,**” which is intended to contain only information that is publicly available or not material information (though it may be sensitive and proprietary) with respect to the Lead Borrower or its securities for purposes of United States federal and state securities laws or is of a type that would be publicly available if the Lead Borrower were a public reporting company (as reasonably determined by the Lead Borrower). Notwithstanding the foregoing, the Lead Borrower shall not be under any obligation to mark any Borrower Materials “**PUBLIC.**” The Lead Borrower agrees that (i) any Loan Documents, (ii) any financial statements delivered pursuant to Section 6.01 (excluding, for the avoidance of doubt, 6.01(c)) and (iii) any Compliance Certificates delivered pursuant to Section 6.02(a) and (iv) notices delivered pursuant to Section 6.03(a) will be deemed to be “**public-side**” Borrower Materials and may be made available to Public Lenders.

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 communications that are not made available through the “**Public Side Information**” portion of the Platform and that may contain material non-public information with respect to the Lead Borrower or its securities for purposes of United States federal or state securities laws.

Section 6.03. *Notices.* Promptly after a Responsible Officer of the Lead Borrower has obtained knowledge thereof, notify the Administrative Agent for prompt further distribution to each Lender:

(a) of the occurrence of any Default;



(b) of the occurrence of any ERISA Event that would reasonably be expected to result in liability of the Lead Borrower or a Restricted Subsidiary or any ERISA Affiliate in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; and

(c) of the filing or commencement of any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against the Lead Borrower or any Restricted Subsidiary that would reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document affecting the rights and obligations of the Lead Borrower or any other Loan Party that would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Lead Borrower (x) that such notice is being delivered pursuant to Sections 6.03(a), (b) or (c) (as applicable) and (y) 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.

Section 6.04. *Payment of Taxes.* Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, (i) to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (ii) if such failure to pay or discharge such obligations and liabilities would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05. *Preservation of Existence, Etc..* (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization or incorporation except (x) in a transaction permitted by Sections 7.04 or 7.05 and (y) any Restricted Subsidiary may merge or consolidate with any other Restricted Subsidiary and (b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of (a) (other than with respect to the Borrowers) or (b), (i) to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to a transaction permitted by Article 7 or clause (a)(y) of this Section 6.05.

Section 6.06. *Maintenance of Properties.* Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material tangible or intangible properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07. *Maintenance of Insurance.*

(a) *Generally.* Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business, against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Lead Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

(b) *Requirements of Insurance.* All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 10 days (or, to the extent reasonably available, 30 days) after receipt by the Collateral Agent of written notice thereof (the Lead Borrower shall deliver a copy of the policy (and to the extent any such policy is cancelled or renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto) and (ii) name the Collateral Agent as lenders' loss payee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) (it being understood that, absent an Event of Default, any proceeds of any such property insurance shall be delivered by the insurer(s) to the Lead Borrower or one of its Subsidiaries and applied in accordance with this Agreement), as applicable.

(c) *Flood Insurance.* If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Lead Borrower shall, or shall cause each Restricted Subsidiary to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and on such terms sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent. Following the Closing Date, the Lead Borrower shall deliver to the Administrative Agent annual renewals of such flood insurance. As a condition precedent to any amendment to this Agreement pursuant to which any increase, extension, or renewal of Loans is contemplated, the Lead Borrower shall cause to be delivered to the Administrative Agent for any Mortgaged Property, a completed “life of the loan” Federal Emergency Management Agency Standard Flood Hazard Determination, duly executed and acknowledged by the appropriate Loan Parties, and evidence of flood insurance, as may be required pursuant to the Flood Insurance Laws.

Section 6.08. *Compliance with Laws.* Comply with, the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09. *Books and Records.* Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied and which reflect all material financial transactions and matters involving the assets and business of the Lead Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10. *Inspection Rights.* Permit 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 (subject to such accountants’ customary policies and procedures), all at the reasonable expense of the Lead Borrower 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, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two times during any calendar year and only one (1) such time shall be at the Lead Borrower’s expense; *provided, further,* that 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 Lead Borrower at any time during normal business hours and upon reasonable advance notice.

The Administrative Agent and the Lenders shall give the Lead Borrower the opportunity to participate in any discussions with the Lead Borrower’s independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Lead Borrowers nor any Restricted Subsidiary shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product.

Section 6.11. *Additional Collateral; Additional Guarantors.* At the Lead Borrower’s expense, take all action either necessary or as reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon (x) the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by the Lead Borrower or any Subsidiary Guarantor (including, without limitation, upon the formation of any Subsidiary that is a Division Successor and is not otherwise an Excluded Subsidiary), (y) any Excluded Subsidiary ceasing to constitute

an Excluded Subsidiary or (z) the designation in accordance with Section 6.14 of an existing direct or indirect wholly owned Domestic Subsidiary (other than an Excluded Subsidiary) as a Restricted Subsidiary:

(i) within sixty (60) days after such formation, acquisition, cessation or designation, or such longer period as the Administrative Agent may agree in writing in its discretion, notify the Administrative Agent thereof and:

(A) cause each such Domestic Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, Mortgages, a counterpart of the Intercompany Note, each Intercreditor Agreement, if applicable, and other security agreements and documents (including, with respect to such Mortgages, the documents listed in clause (f) of the definition of “**Collateral and Guarantee Requirement**”), as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the, Security Agreement and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Domestic Subsidiary (and the parent of each such Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Domestic Subsidiary and each direct or indirect parent of such Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements and Intellectual Property Security Agreements, and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) as promptly as practicable after the request therefor by the Administrative Agent or Collateral Agent, deliver to the Collateral Agent with respect to each Material Real Property, any existing title reports, abstracts, surveys, appraisals or environmental assessment reports, to the extent available and in the possession of the Lead Borrower or any Subsidiary Guarantor; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report or appraisal whose disclosure to the Administrative Agent would require the consent of a Person other than the Lead Borrower or any Subsidiary Guarantor, where, despite the commercially reasonable efforts of the Lead Borrower or any Subsidiary Guarantor to obtain such consent, such consent cannot be obtained; and

(iii) if reasonably requested by the Administrative Agent or the Collateral Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Collateral Agent any other items necessary from time to time to satisfy the

Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i) or (ii) or clause (b) below.

(b) (i) Not later than forty-five (45) days (or such longer period as the Administrative Agent may agree in writing in its discretion) after the later of (x) confirmation from the Lenders that flood due diligence and flood insurance compliance as required by Section 6.07 hereto has been completed and (y)



forty-five (45) days after the acquisition by the Lead Borrower or any Subsidiary Guarantor (including, without limitation, any acquisition pursuant to a Division) of any Material Real Property as determined by the Lead Borrower (acting reasonably and in good faith) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, cause such property to be subject to a Lien and Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties and take, or cause the relevant Guarantor to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement; and (ii) as promptly as practicable after the request therefor by the Administrative Agent or Collateral Agent, deliver to the Collateral Agent with respect to each such acquired Material Real Property, any existing title reports, abstracts, surveys, appraisals or environmental assessment reports, to the extent available and in the possession of the Lead Borrower, a Subsidiary Guarantor or their respective Subsidiaries; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report or appraisal whose disclosure to the Administrative Agent would require the consent of a Person other than the Lead Borrower, the Subsidiary Guarantor or one of their respective Subsidiaries, where, despite the commercially reasonable efforts of the Lead Borrower, the Subsidiary Guarantor or one of their respective Subsidiaries to obtain such consent, such consent cannot be obtained.

Section 6.12. *Compliance with Environmental Laws.* Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all commercially reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain, maintain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Lead Borrower or its Restricted Subsidiaries are required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13. *Further Assurances.* Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Intercreditor Agreement or any Collateral Document or other document or instrument relating to any Collateral, and (ii) 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 may reasonably request from time to time in order to carry out more effectively the purposes of any Intercreditor Agreement or the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Guarantor subject to a Mortgage constituting Collateral, the Lead Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of FIRREA.

Section 6.14. *Designation of Subsidiaries.* The Lead Borrower may at any time designate any Restricted Subsidiary of the Lead Borrower (other than the other Borrowers) as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Event of Default shall have occurred and be continuing, (ii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of any Senior Secured Notes Documents or any Junior Financing with an aggregate outstanding principal amount in excess of the Threshold Amount and (iii) in no event shall any Subsidiary be designated as an Unrestricted Subsidiary if it owns any intellectual property (A) that was owned by any Loan Party or Restricted Subsidiary on the Closing Date and (B) that is material (at the time of such designation) to the business of the Lead Borrower and its Restricted Subsidiaries, taken as a whole. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Lead Borrower therein at the date of designation in an amount equal to the fair market value of the Lead Borrower’s or its Subsidiary’s (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Lead Borrower in Unrestricted Subsidiaries pursuant to the preceding

sentence in an amount equal to the fair market value at the date of such designation of the Lead Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

Section 6.15. *Maintenance of Ratings.* In respect of the Lead Borrower, use commercially reasonable efforts to (i) cause the Term Loans to be continuously rated (but not any specific rating) by S&P and Moody's and (ii) maintain a public corporate rating (but not any specific rating) from S&P, a public corporate family rating (but not any specific rating) from Moody's.

Section 6.16. *Post-Closing Covenants.* Except as otherwise agreed by the Administrative Agent in its reasonable discretion, the Lead Borrower shall, and shall cause each of the other Loan Parties to, deliver each of the documents, instruments and agreements and take each of the actions set forth on Schedule 6.16 within the time periods set forth therein (or such longer time periods as determined by the Administrative Agent in its reasonable discretion).

Section 6.17. *Change in Nature of Business.* The Lead Borrower shall not, nor shall the Lead Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Lead Borrower and the Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

Section 6.18. *Use of Proceeds.* The proceeds of the Initial Term Loans received on the Closing Date, together with the proceeds of the Senior Secured Notes, shall not be used for any purpose other than for the Transactions and to fund cash to the Lead Borrower's balance sheet. After the Closing Date, the proceeds of the Revolving Credit Loans and Swing Line Loans shall be used for general corporate purposes (including, without limitations, Capital Expenditures and Transaction Expenses) and any other purpose not prohibited by this Agreement, including Permitted Acquisitions and other Investments. The Letters of Credit shall be used to support obligations of Holdings, the Lead Borrower and its Subsidiaries incurred for general corporate purposes and any other purpose not prohibited by this Agreement (including Permitted Acquisitions and other Investments).

Section 6.19. *Accounting Changes.* The Lead Borrower shall not make any change in its fiscal year; *provided, however,* that the Lead Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Lead Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.20. *Compliance with OFAC; USA PATRIOT Act; FCPA, etc.*

(a) Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Lead Borrower and its Restricted Subsidiaries shall comply, in all material respects, with (i) the Trading with the Enemy Act, as amended, the International Emergency Economic Powers Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (ii) the USA PATRIOT Act and (iii) the United States Foreign Corrupt Practices Act of 1977.

(b) The Lead Borrower and its Restricted Subsidiaries shall promptly, from time to time, furnish to the Administrative Agent (which will promptly furnish such information to the Lenders), information and documentation reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) required under applicable “**know your customer**” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

ARTICLE 7 NEGATIVE  
COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than Treasury Services Obligations, obligations under Secured Hedge Agreements or obligations under any Bilateral Letter of Credit Facilities) which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been

Cash Collateralized or a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer is in place), then from and after the Closing Date:

Section 7.01. *Liens*. The Lead Borrower or the Restricted Subsidiaries shall not, directly or indirectly, 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 (i) any Loan Document and (ii) any Senior Secured Notes Documents in an aggregate principal amount under this clause (ii) not to the aggregate principal amount outstanding on the Closing Date and, in the case of clause (ii), Liens securing any Permitted Refinancing thereof;

(b) Liens existing on the Closing Date and listed on Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, governmental duties, levies, assessments and charges that are not overdue for a period of more than sixty (60) days or not yet payable or subject to penalties for nonpayment or that are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP (as determined by the Lead Borrower in good faith);

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens that secure amounts not overdue for a period of more than sixty (60) days or if more than sixty (60) days overdue, that are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP (as determined by the Lead Borrower in good faith);

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance or self-insurance to the Lead Borrower or any of the Restricted Subsidiaries;

(f) Liens to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) letters of credit and bank guarantees required or requested by any Governmental Authority in connection with any contract or Law) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and other minor title defects affecting Real Property, and any exceptions on the final Mortgage Policies issued in connection with the Mortgaged Properties, that do not in the aggregate materially interfere with the ordinary conduct of the business of the Lead Borrower or any of the Restricted Subsidiaries, taken as a whole;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) (i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or consistent with past practice which do not interfere in any material respect with the business of the Lead Borrower and the Restricted Subsidiaries, taken as a whole and (ii) leases, licenses, subleases or sublicenses constituting a Disposition permitted under Section 7.05;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or consistent with past practice and (ii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(l) Liens (i) on cash advances or Cash Equivalents in favor of (x) the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(i) and (n) to be applied against the purchase price for such Investment, including Liens on cash or Cash Equivalents to secure letters of credit issued to backstop commitments or (y) the buyer of any property to be Disposed of pursuant to Sections 7.05(j), (o) or (t) to secure obligations in respect of indemnification, termination fee or similar seller obligations and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of Holdings, the Lead Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing permitted intercompany Indebtedness and (ii) in favor of Holdings, the Lead Borrower or any Subsidiary Guarantor;

(n) any interest or title of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into the Lead Borrower or any of the Restricted Subsidiaries in the ordinary course of business, or with respect to IP Rights that is not material to the conduct of the business of the Lead Borrower and the Restricted Subsidiaries, taken as a whole;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Lead Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with past practice permitted by this Agreement;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.02;

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Lead Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Lead Borrower or any of the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Lead Borrower or any of the Restricted Subsidiaries in the ordinary course of business;



(s) Liens solely on any cash earnest money deposits made by the Lead Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Lead Borrower or any of the Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within 365 days of the acquisition, construction, repair, replacement, lease, expansion, development, installation, relocation, renewal, maintenance, upgrade or improvement of such asset subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Financing Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Financing Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Restricted Subsidiary that is not a Loan Party securing the Indebtedness of any Restricted Subsidiary that is not a Loan Party;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary); *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Lead Borrower and the Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness) and (iii) the incurrence of any Lien pursuant to this clause (aa) shall not “refresh” any utilization of any other clause under this Section 7.01 pursuant to which such Lien was originally incurred;

(bb) Liens securing Obligations relating to Indebtedness permitted to be incurred pursuant to Section 7.03(r)(ii);

(cc) Liens with respect to property or assets of the Lead Borrower or any of the Restricted Subsidiaries securing obligations in an aggregate principal amount at the time of incurrence of such Liens not to exceed the greater of (i) \$200,000,000 and (ii) 33% of LTM Consolidated EBITDA, in each case determined as of the date of incurrence; *provided* that any Lien incurred pursuant to this clause (cc) may be reallocated by the Lead Borrower such that it ceases to be deemed allocated for purposes of this clause but is instead deemed incurred under Section 7.01(oo)(ii) from and after the first date on which the Person incurring such Lien could have incurred such Lien under Section 7.01(oo)(ii) at such date without reliance on this clause (cc).

(dd) Liens to secure Indebtedness permitted under Section 7.03(g), 7.03(q) or 7.03(s); *provided* that an Other Debt Representative acting on behalf of the holders of such Indebtedness shall have become party to (i) if such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations, the Junior Lien Intercreditor Agreement (if any) as a “Senior Representative” (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement), if applicable, and the Closing Date Intercreditor Agreement or (ii) if such Indebtedness is secured by the Collateral on a junior Lien basis to the Liens securing the Obligations, the Junior Lien Intercreditor Agreement as a “Junior Priority Representative” (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement); *provided, further*, that with respect to Liens securing the Collateral on a *pari passu* basis to the Liens securing the Obligations, after giving effect to the incurrence of any such Liens securing Indebtedness permitted under Section 7.03(g) or 7.03(s), the Consolidated First Lien Net Leverage Ratio on a Pro Forma Basis would be no greater than (x) 2.25 to 1.00 or (y) the Consolidated First Lien Net Leverage Ratio immediately prior thereto.

(ee) Liens on the Collateral securing obligations in respect of Credit Agreement Refinancing Indebtedness (and any Permitted Refinancing of any of the foregoing); *provided* that (x) any such Liens securing any Permitted Refinancing in respect of such Permitted First Priority Refinancing Debt are subject to the Closing Date Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of such Permitted Junior Lien Refinancing Debt are subject to the Junior Lien Intercreditor Agreement;

(ff) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility or in connection with vendor financings and receivables programs in the ordinary course of business;

(gg) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person’s obligations in respect of documentary letters of credit or banker’s acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(hh) Liens on cash or Cash Equivalents to secure Indebtedness permitted under Section 7.03(f) or (l), to the extent created in the ordinary course of business or consistent with past practice;

(ii) Liens securing any Permitted Refinancing directly or indirectly permitted under Section 7.03 that are secured by Liens on the same assets as the Liens securing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended by such Permitted Refinancing, *plus* improvements, accessions, dividends, distributions, proceeds or products thereof and after-acquired property; *provided* that the incurrence of any Lien pursuant to this clause (ii) shall not “refresh” any utilization of any other clause under this Section 7.01 pursuant to which such Lien was originally incurred;

(jj) any encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(kk) Liens on Equity Interests of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(ll) deposits of cash with the owner or lessor of premises leased and operated by the Lead Borrower or any of its Subsidiaries in the ordinary course of business of the Lead Borrower and such Subsidiary or consistent with past practice to secure the performance of the Lead Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(mm) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with past practice;

(nn) Liens on any funds or securities held in escrow accounts established for the purpose of holding proceeds from issuances of debt securities or incurrence of other Indebtedness by the Lead Borrower or any of the Restricted Subsidiaries issued after the Closing Date, together with any additional funds required in order to fund any mandatory redemption or sinking fund payment on such debt securities or other Indebtedness;

(oo) (i) Liens on the Collateral on a junior Lien basis to the Liens securing the Obligations so long as immediately after giving effect to the incurrence of the Indebtedness secured by such Liens and the use of proceeds thereof, the Consolidated Secured Net Leverage Ratio on a Pro Forma Basis is not greater than 4.00 to 1.00 and (ii) Liens securing the Collateral on a pari passu basis to the Liens securing the Obligations so long as immediately after giving effect to the incurrence of the Indebtedness secured by such Liens and the use of proceeds thereof, the Consolidated First Lien Net Leverage Ratio on a Pro Forma Basis is not greater than 2.25 to 1.00; *provided* that an Other Debt Representative acting on behalf of the holders of such Indebtedness shall have become party to (a) if such Indebtedness is secured by the Collateral on a pari passu basis (but without regard to the control of remedies) with the Obligations, the Junior Lien Intercreditor Agreement (if any) as a "Senior Representative" (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement), if applicable, and the Closing Date Intercreditor Agreement or (b) if such Indebtedness is secured by the Collateral on a junior Lien basis to the Liens securing the Obligations, the Junior Lien Intercreditor Agreement as a "Junior Priority Representative" (or similar term, in each case, as defined in the Junior Lien Intercreditor Agreement);

(pp) Liens arising under Article 24 or 25 of the general terms and conditions (*Algemene Bank Voorwaarden*) of any member of the Dutch Bankers' Association (*Nederlandse Vereniging van Banken*) or any similar term applied by a financial institution in the Netherlands pursuant to its general terms and conditions; and

(qq) Liens, including any netting or set-off arising as a result of a fiscal unity (*fiscale eenheid*) for Dutch tax purposes, which consists solely of Loan Parties and other Restricted Subsidiaries that, in each case, are resident for tax purposes in the Netherlands.

Notwithstanding the foregoing, no consensual Liens shall exist on Equity Interests of the Lead Borrower or any Restricted Subsidiary that constitute Collateral other than pursuant to clauses (a), (aa), (bb), (cc), (dd), (ee), (ii) and (oo) above.

For purposes of determining compliance with this Section 7.01, (A) Liens need not be incurred solely by reference to one category of Liens permitted by this Section 7.01 but are permitted to be incurred in part under any combination thereof and of any other available exemption, (B) in the event that Lien (or any portion thereof) meets the criteria of one or more of the categories of Liens permitted by this Section 7.01, the Lead Borrower may, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this provision, (C) in the event that a portion of Indebtedness or other obligations secured by a Lien could be classified as secured in part pursuant to Section 7.01(dd) above (giving pro forma effect to the incurrence of such portion of such Indebtedness or other obligations), the Lead Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any obligations in respect thereof) as having been secured pursuant to Section 7.01(dd) above and thereafter the remainder of the Indebtedness or other obligations as having been secured pursuant to one or more of the other clauses of this Section 7.01 and if any such test would be satisfied in any subsequent fiscal quarter following

the relevant date of determination, then such reclassification may be deemed to have automatically occurred at such time and (D) with respect to any Lien securing Indebtedness that was permitted to secure such

Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any amount permitted under Section 7.03(bb) in respect of such Indebtedness. Any Liens in respect of the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, in each case in respect of any Indebtedness, shall not be deemed to be an incurrence of a Lien in respect of such Indebtedness for purposes of this Section 7.01. In addition, with respect to any Indebtedness that is designated to be incurred on any Deemed Date pursuant to the last paragraph of Section 7.03, any Lien that does or that shall secure such Indebtedness may also be designated by the Lead Borrower or any Restricted Subsidiary to be incurred on such Deemed Date and, in such event, any related subsequent actual incurrence of such Lien shall be deemed for purposes of Sections 7.01 and 7.03 of this Agreement, without duplication, to be incurred on such prior date (and on any subsequent date until such commitment is funded or terminated or such election is rescinded or until such time as the related Indebtedness is no longer deemed outstanding pursuant to the last paragraph of Section 7.03), including for purposes of calculating usage of any permitted Lien.

Section 7.02. *Investments.* The Lead Borrower or the Restricted Subsidiaries shall not, directly or indirectly, make any Investments, except:

(a) Investments by the Lead Borrower or any of the Restricted Subsidiaries in assets that were Cash Equivalents when such Investment was made;

(b) loans or advances to, or guarantees of Indebtedness of, future, present or former officers, directors, managers, members, partners, independent contractors, consultants and employees of any Loan Party (or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of the Lead Borrower or any direct or indirect parent thereof directly from such issuing entity (provided that the amount of such loans and advances shall be contributed to the Lead Borrower in cash as Equity Interests other than Disqualified Equity Interests) and (iii) for any other purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount outstanding at any time under clause (iii) above shall not exceed \$25,000,000;

(c) Investments by Lead Borrower or any of the Restricted Subsidiaries in Holdings, the Lead Borrower or any of the Restricted Subsidiaries or any Person that will, upon such Investment become a Restricted Subsidiary;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business or consistent with past practice;

(e) Investments (excluding loans and advances made in lieu of Restricted Payments pursuant to and limited by Section 7.02(m) below) consisting of transactions permitted under Sections 7.01 (other than 7.01(p)), 7.03 (other than 7.03(c) and (d)), 7.04 (other than 7.04(c), (d) and (e)), 7.05 (other than 7.05(d) (ii) or 7.05(e)), 7.06 (other than 7.06(e) and (i)(iv)) and 7.10, respectively;

(f) Investments (i) existing or contemplated on the Closing Date and, with respect to each such Investments in an amount in excess of \$25,000,000, set forth on Schedule 7.02(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the Closing Date by the Lead Borrower or any

Restricted Subsidiary in a Borrower or any other Restricted Subsidiary and any modification, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such Investment as of the Closing Date or as otherwise permitted by this Section 7.02;

(g) Investments in Swap Contracts permitted under Section 7.03(f);

(h) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice;



(i) any acquisition of all or substantially all the assets of a Person, or any Equity Interests in a Person that becomes a Restricted Subsidiary or a division or line of business of a Person (or any subsequent Investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions, if immediately after giving effect thereto: (i) no Event of Default under Sections 8.01(a) or (f) with respect to the Lead Borrower shall have occurred and be continuing, (ii) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03 and (iii) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary or an Unrestricted Subsidiary) shall become a Guarantor, in each case, in accordance with Section 6.11 (any such acquisition, a “**Permitted Acquisition**”);

(j) the Lead Borrower and the Restricted Subsidiaries may make Investments in an unlimited amount so long as the Consolidated Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 2.25 to 1.00;

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or consistent with past practice or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to Holdings, the Lead Borrower and any direct or indirect parent of Holdings, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(g), (h) or (i);

(n) other Investments in an aggregate amount outstanding pursuant to this clause (n) (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) at any time not to exceed (x) the greater of (i) \$150,000,000 and (ii) 25% of LTM Consolidated EBITDA (in each case, net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) *plus* (y) the portion, if any, of the Cumulative Credit on such date that the Lead Borrower elects to apply to this clause (y) (*provided* that no Event of Default under Section 8.01(a) or Section 8.01(f) shall have occurred and be continuing or would exist after giving effect to such Investment under clause (y)) *plus* (z) the Available RP Capacity Amount;

(o) advances of payroll payments to employees in the ordinary course of business or consistent with past practice;

(p) Investments to the extent that payment for such Investments is made solely with Equity Interests (other than Disqualified Equity Interests) of the Lead Borrower (or any direct or indirect parent of the Lead Borrower);

(q) Investments of a Restricted Subsidiary acquired after the Closing Date or of a Person merged or amalgamated or consolidated into the Lead Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary in accordance with Section 7.04 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;



(r) the contribution, assignment, licensing, sub-licensing or other Investment of IP Rights or other general intangibles pursuant to any Intercompany License Agreement and any other Investments made in connection therewith;

(s) Investments constituting promissory notes or the non-cash portion of consideration, in each case, received in a Disposition permitted by Section 7.05;

(t) Guarantees by the Lead Borrower or any of its Restricted Subsidiaries of leases (other than Financing Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business or consistent with past practice;

(u) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Lead Borrower are necessary or advisable to effect any Qualified Securitization Facility (including any contribution of replacement or substitute assets to such subsidiary) or any repurchase obligation in connection therewith;

(v) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (v) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities (until such proceeds are converted to Cash Equivalents), not to exceed the greater of (i) \$50,000,000 and (ii) 8% of LTM Consolidated EBITDA at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided* that any Investment made by any Loan Party pursuant to this clause

(v) shall be subordinated in right of payment to the Loans;

(w) any Investment in a Similar Business when taken together with all other Investments made pursuant to this clause (w) that are at that time outstanding not to exceed the greater of (i) \$100,000,000 and (ii) 17% of LTM Consolidated EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided, however*, that if any Investment pursuant to this clause (w) is made in any Person that is not the Lead Borrower or a Restricted Subsidiary of the Lead Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such investment shall thereafter be deemed to have been made pursuant to clause (c) above and shall cease to have been made pursuant to this clause (w);

(x) Investments constituting Permitted Intercompany Activities;

(y) Investments that are made in (i) an amount equal to the amount of Excluded Contributions previously received and the Lead Borrower elects to apply under this clause (y) or (ii) without duplication with clause (i), in an amount equal to the Net Proceeds from a Disposition in respect of property or assets acquired after the Closing Date, if the acquisition of such property or assets was financed with Excluded Contributions, in each case, to the extent Not Otherwise Applied;

(z) Investments in joint ventures of the Lead Borrower or any of the Restricted Subsidiaries, taken together with all other Investments made pursuant to this clause (z) that are at that time outstanding, not to exceed the greater of (i) \$85,000,000 and (ii) 14% of LTM Consolidated EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(aa) earnest money deposits required in connection with Permitted Acquisitions (or similar Investments);

(bb) contributions to a “rabbi” trust for the benefit of employees or other grantor trusts subject to claims of creditors in the case of bankruptcy of the Borrowers;

(cc) Investments to the extent required by applicable rules under the Exchange Act or by any Governmental Authority, including any Investment made in order to avoid any early warning or notice requirements under such rules or requirements;

(dd) [Reserved];

(ee) Investments made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client contracts;

(ff) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Lead Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with past practice of such Captive Insurance Subsidiary or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(gg) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests of Holdings or any other parent entity;

(hh) Investments in the ordinary course of business in prepaid expenses, negotiable instruments held for collection and lease, utility and worker's compensation, performance and other similar deposits provided to third-parties;

(ii) Investments in Foreign Subsidiaries in connection with cash pooling arrangements and cash management services entered into in the ordinary course of business;

(jj) lease, utility and other similar deposits in the ordinary course of business; and

(kk) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with Section 7.07 (except transactions described in Section 7.07(e)).

For purposes of determining compliance with this Section 7.02, in the event that an item of Investment meets the criteria of more than one of the categories of Investments described above, the Lead Borrower may, in its sole discretion, classify or later divide, classify or reclassify all or a portion of such item of Investment or any portion thereof in a manner that complies with this Section 7.02 and will only be required to include the amount and type of such Investment in one or more of the above clauses. In the event that a portion of the Investments could be classified as incurred under a "ratio-based" basket (giving pro forma effect to the making of such Investments), the Lead Borrower, in its sole discretion, may classify such portion of such Investment as having been incurred pursuant to such "ratio-based" basket and thereafter the remainder of the Investments as having been incurred pursuant to one or more of the other clauses of this Section 7.02 and if any such test would be satisfied in any subsequent fiscal quarter following the relevant date of determination, then such reclassification may be deemed to have automatically occurred at such time.

Notwithstanding anything in this Agreement to contrary, no Loan Party or Restricted Subsidiary shall make an Investment in any Unrestricted Subsidiary constituting intellectual property (A) that was owned by any Loan Party or Restricted Subsidiary on the Closing Date and (B) that is material (at the time of such Investment) to the business of the Lead Borrower and its Restricted Subsidiaries, taken as a whole.

Section 7.03. *Indebtedness.* The Lead Borrower or any of the Restricted Subsidiaries shall not, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Lead Borrower or any Restricted Subsidiary under (i) the Loan Documents and (ii) the Senior Secured Notes Documents and in the case of clause (ii), in an aggregate outstanding principal amount not to exceed the principal amount outstanding as of the Closing Date and any Permitted Refinancing thereof;

(b) (i) Indebtedness outstanding on the Closing Date and as listed on Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) Indebtedness owed to Holdings, the Lead Borrower or any Restricted Subsidiary outstanding on the Closing Date and any refinancing thereof with Indebtedness owed to Holdings, the Lead Borrower or any Restricted Subsidiary in a principal amount that does not exceed the principal amount (or accreted value, if applicable) of the intercompany Indebtedness so refinanced; *provided* that (x) any Indebtedness advanced by any Person that is not a Loan Party to any Loan Party pursuant to this clause (b) shall be subordinated in right of payment to the Loans and (y) any Indebtedness advanced by any Loan Party to any Person that is not a Loan Party shall either (i) be made in the ordinary course of business or consistent with past practice or (ii) be evidenced by a note pledged as Collateral on a first priority basis for the benefit of the Obligations, which note shall be in form and substance reasonably satisfactory to the Administrative Agent (it being understood that an Intercompany Note shall be satisfactory to the Administrative Agent);

(c) Guarantees by the Lead Borrower and any Restricted Subsidiary in respect of Indebtedness of the Lead Borrower or any Restricted Subsidiary otherwise permitted hereunder; *provided* that (A) no Guarantee (other than Guarantees by a Foreign Subsidiary of Indebtedness of another Foreign Subsidiary) of any Senior Secured Notes or any Indebtedness constituting Junior Financing with a principal amount in excess of the Threshold Amount shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Lead Borrower or any Restricted Subsidiary owing to Holdings, the Lead Borrower or any Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting an Investment permitted by Section 7.02; *provided* that (x) any such Indebtedness advanced by any Loan Party to any Person that is not a Loan Party shall either (i) be made in the ordinary course of business or consistent with past practice or (ii) be evidenced by an Intercompany Note and (y) any such Indebtedness advanced by any Person that is not a Loan Party to any Loan Party shall be subordinated in right of payment to the Loans (for the avoidance of doubt, any such Indebtedness owing by a Loan Party to a Restricted Subsidiary that is not a Loan Party shall be deemed to be expressly subordinated in right of payment to the Loans unless the terms of such Indebtedness expressly provided otherwise);

(e) (i) Attributable Indebtedness and other Indebtedness (including Financing Leases) financing an acquisition, construction, repair, replacement, lease, expansion, development, installation, relocation, renewal, maintenance, upgrade or improvement of a fixed or capital asset incurred the Lead Borrower or any Restricted Subsidiary prior to or within 365 days after the acquisition, construction, repair, replacement, lease, expansion, development, installation, relocation, renewal, maintenance, upgrade or improvement of the applicable asset in an aggregate amount not to exceed (A) the amount of such Indebtedness outstanding on the Closing Date *plus* (B) the greater of (1) \$150,000,000 and (2) 25% LTM Consolidated EBITDA, in each case determined at the time of incurrence at any time outstanding (together with any Permitted Refinancings thereof but without giving effect to any increase in principal amount permitted under clause (a) of the proviso to the definition of "Permitted Refinancing"), (ii) Attributable Indebtedness arising out of any Sale and Lease-Back Transaction or lease lease-back transactions that are subject to fair market terms and (iii) any Permitted Refinancing of any of the foregoing.

(f) Indebtedness in respect of Swap Contracts incurred in the ordinary course of business and not for speculative purposes;

(g) (i) Indebtedness of the Lead Borrower or any Restricted Subsidiary incurred or assumed in connection with any Permitted Acquisition or similar Investment expressly permitted hereunder; *provided* that after giving pro forma effect to such Permitted Acquisition or Investment and the incurrence or assumption of such Indebtedness, the Lead Borrower could incur \$1.00 of Indebtedness under Section 7.03(s) or the Consolidated Fixed Charge Coverage Ratio determined on a Pro Forma Basis would be



greater than or equal to the Consolidated Fixed Charge Coverage Ratio immediately prior thereto; *provided* that any such Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party pursuant to Sections 7.03(q) or 7.03(s), does not exceed in the aggregate at any time outstanding the greater of (i) \$250,000,000 and (ii) 42% of LTM Consolidated EBITDA, in each case determined at the time of incurrence and (ii) any Permitted Refinancing thereof; *provided further* that any such Indebtedness incurred (but not assumed) and secured on a pari passu basis with the Facilities in the form of syndicated floating-rate term loans of the applicable currency (other than customary bridge loans or term loan A facilities as determined by the Lead Borrower in good faith) shall be subject to the MFN Protection as if such Indebtedness were an Incremental Term B Loan of such currency;

(h) Indebtedness representing deferred compensation or similar arrangements to any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Lead Borrower (or any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice;

(i) Indebtedness consisting of promissory notes issued by the Lead Borrower or any of the Restricted Subsidiaries to future, present or former officers, managers, members, independent contractors, consultants, directors and employees, their respective Controlled Investment Affiliates or Immediate Family Members, in each case, to finance the purchase or redemption of Equity Interests of the Lead Borrower or any direct or indirect parent of the Lead Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Lead Borrower or any Restricted Subsidiary prior to the Closing Date or thereafter in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earn-outs) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Lead Borrower or any Restricted Subsidiary under deferred purchase price, earn-outs or other similar arrangements incurred by such Person prior to the Closing Date or thereafter in connection with Permitted Acquisitions or any other Investment expressly permitted hereunder;

(l) Treasury Services Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case in connection with deposit accounts;

(m) (i) Indebtedness of the Lead Borrower or any Restricted Subsidiary, in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed (x) the greater of (i) \$100,000,000 and (ii) 17% of LTM Consolidated EBITDA at any time outstanding *plus*

(y) 150% of the cumulative amount of the net cash proceeds and Cash Equivalent proceeds from the sale of Equity Interests (other than Excluded Contributions, proceeds of Disqualified Equity Interests, Designated Equity Contributions or sales of Equity Interests to the Lead Borrower or any of its Subsidiaries) of the Lead Borrower or any direct or indirect parent of the Lead Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) which proceeds have been contributed as common equity to the capital of the Lead Borrower that has been Not Otherwise Applied and (ii) any Permitted Refinancing thereof.

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with past practice;

(o) Indebtedness incurred by the Lead Borrower or any Restricted Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created, or relating

to obligations or liabilities incurred, in the ordinary course of business or consistent with past practice, including in respect of workers' compensation claims, health, disability or other

employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of self-insurance and obligations in respect of stays, customs, performance, bid, indemnity, appeal, judgment and other similar bonds or instruments and performance, bankers' acceptance and completion guarantees and similar obligations provided by the Lead Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) (i) Indebtedness incurred in an aggregate principal amount under this clause (q), when aggregated with the amount of Incremental Term Loans and Incremental Revolving Credit Commitments incurred pursuant to Section 2.14(d)(v), not to exceed the Available Incremental Amount, so long as (x) if the proceeds of such Indebtedness are being used to finance a Permitted Acquisition, Investment, or irrevocable repayment, repurchase or redemption of any Indebtedness, no Event of Default under Sections 8.01(a) or (f) with respect to Holdings or the Lead Borrower shall have occurred and be continuing or would exist after giving effect to such Indebtedness, or (y) if otherwise, no Event of Default shall have occurred and be continuing or would exist after giving effect to such Indebtedness; *provided* that such Indebtedness shall be subject to the maturity and Weighted Average Life to Maturity requirements applicable to Incremental Facilities under Section 2.14(e); *provided* that if such Indebtedness is secured on a junior Lien basis by a Loan Party with respect to Collateral, be subject to the Junior Lien Intercreditor Agreement and, if the Indebtedness is secured on a *pari passu* basis with the Facilities, be subject to the Closing Date Intercreditor Agreement; *provided further*, that in the case of Incremental Equivalent First Lien Debt in the form of syndicated floating-rate term loans of the applicable currency (other than customary bridge loans or term loan A facilities as determined by the Lead Borrower in good faith), be subject to the MFN Protection as if such Indebtedness were an Incremental Term Loan of such currency; *provided*, that any such Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party pursuant to Sections 7.03(g) or 7.03(s), does not exceed in the aggregate at any time outstanding, the greater of (ii) \$250,000,000 and (ii) 42% of LTM Consolidated EBITDA, in each case determined at the time of incurrence, and (ii) any Permitted Refinancing thereof;

(r) (i) Indebtedness supported by a letter of credit, in a principal amount not to exceed the face amount of such letter of credit and (ii) Indebtedness under Bilateral Letter of Credit Facilities not to exceed \$200,000,000 at any time;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof; *provided* that Permitted Ratio Debt secured on a *pari passu* basis with the Facilities in the form of syndicated floating-rate term loans of the applicable currency (other than customary bridge loans or term loan A facilities as determined by the Lead Borrower in good faith) shall be subject to the MFN Protection as if such Indebtedness were an Incremental Term B Loan of such currency;

(t) Credit Agreement Refinancing Indebtedness;

(u) Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto;

(v) Indebtedness incurred by a Foreign Subsidiary and/or Indebtedness incurred on behalf thereof or representing Guarantees of Indebtedness of Foreign Subsidiaries which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (v) and then outstanding, does not exceed the greater of \$100,000,000 and 17% of Foreign Subsidiary Total Assets;

(w) Indebtedness arising as a result of vendor financing in the ordinary course of business;

(x) Indebtedness arising from Permitted Intercompany Activities;

(y) Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed the greater of (i) \$150,000,000 and (ii) 25% of LTM Consolidated EBITDA at any time outstanding;

(z) any Indebtedness arising under guarantees entered into pursuant to Section 2:403 of the Dutch Civil Code in respect of a Subsidiary incorporated in the Netherlands and any residual liability with respect to such guarantees arising under Section 2:404 of the Dutch Civil Code;

(aa) any joint and several liability arising as the result of a fiscal unity (*fiscale eenheid*) for Dutch tax purposes, which consists solely of Loan Parties and other Restricted Subsidiaries that, in each case, are resident for tax purposes in the Netherlands; and

(bb) all premiums (if any), interest (including post-petition interest and paid-in-kind interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through aa) above.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness meets the criteria of more than one of the categories or subcategories of Indebtedness described above, the Lead Borrower may, in its sole discretion, classify or later divide, classify or reclassify all or a portion of such item of Indebtedness or any portion thereof (including as between the Free and Clear Incremental Amount and the Incurrence-Based Incremental Amount) in a manner that complies with this Section 7.03 and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses (or subclauses thereof); *provided* that all Indebtedness outstanding under the Loan Documents and any Senior Secured Notes Documents and, in each case, any Permitted Refinancing thereof, will at all times be deemed to be outstanding in reliance only on the exception in Section 7.03(a) (but without limiting the right of the Lead Borrower to classify and reclassify, or later divide, classify or reclassify, Indebtedness incurred under Section 2.14 or Sections 7.03(q) or 7.03(s)). In the event that a portion of Indebtedness or other obligations could be classified as incurred under a “ratio-based” basket (giving pro forma effect to the incurrence of such portion of such Indebtedness or other obligations), the Lead Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any obligations in respect thereof) as having been incurred pursuant to such “ratio-based” basket and thereafter the remainder of the Indebtedness or other obligations as having been incurred pursuant to one or more of the other clauses of this Section 7.03 and if any such test would be satisfied in any subsequent fiscal quarter following the relevant date of determination, then such reclassification may be deemed to have automatically occurred at such time. The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03.

Further, for purposes of determining compliance with this Section 7.03 and Section 7.01, in connection with the incurrence of revolving loan Indebtedness under this Section 7.03 (excluding for the avoidance of doubt any revolving loan Indebtedness pursuant to any Loan Document) or any commitment or other transaction relating to the incurrence of Indebtedness under this Section 7.03 and the granting of any Lien to secure such Indebtedness, the Lead Borrower or applicable Restricted Subsidiary may designate the incurrence of such Indebtedness and the granting of such Lien therefor as having occurred on the date of first incurrence of such revolving loan Indebtedness or commitment or intention to consummate such transaction (such date, the “**Deemed Date**”), and any related subsequent actual incurrence and the granting of such Lien therefor will be deemed for purposes of this Section 7.03 and Section 7.01 of this Agreement to have been incurred or granted on such Deemed Date, including, without limitation, for purposes of calculating usage of any baskets hereunder (if applicable), the Consolidated First Lien Net Leverage Ratio, Consolidated Total Net Leverage Ratio, Consolidated Fixed Charge Coverage Ratio and Consolidated EBITDA (and all such calculations, without duplication, on the Deemed Date and on any subsequent date until such commitment is funded or terminated or such transaction is consummated or abandoned or such election is rescinded shall be made on a Pro Forma Basis after giving effect to the deemed incurrence, the granting of any Lien therefor and related transactions in connection therewith).

Section 7.04. *Fundamental Changes*. The Lead Borrower or any of the Restricted Subsidiaries shall not 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 (including, in each case, pursuant to a Division), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Lead Borrower (including a merger, the purpose of which is to reorganize the Lead Borrower into a new jurisdiction); *provided* that the Lead Borrower shall be the continuing or surviving Person and such merger does not result in the Lead Borrower ceasing to be a corporation, partnership or limited liability company organized under the Laws of the United States, any state thereof or the District of Columbia or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary may liquidate or dissolve or any Borrower or any Subsidiary may change its legal form (x) if the Lead Borrower determines in good faith that such action is in the best interest of the Lead Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders and (y) to the extent such Restricted Subsidiary is a Loan Party, any assets or business not otherwise disposed of or transferred in accordance with Sections 7.02 (other than Section 7.02(e)) or Section 7.05 or, in the case of any such business, discontinued, shall be transferred to otherwise owned or conducted by another Loan Party after giving effect to such liquidation or dissolution (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Lead Borrower or any other Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or a Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary that is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

(d) so long as no Default exists or would result therefrom, any Borrower may merge or consolidate with any other Person; *provided* that (i) such Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not such Borrower (any such Person, the “**Successor Borrower**”), (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia (other than the Dutch Borrower, which shall remain organized in the Netherlands), (B) the Successor Borrower shall expressly assume all the obligations of the applicable Borrower under this Agreement and the other Loan Documents to which such Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guaranty shall apply to the Successor Borrower’s obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Borrower’s obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Borrower’s obligations under the Loan Documents, (F) the applicable Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document preserves the enforceability of this Agreement, the Guaranty and the Collateral Documents and the perfection of the Liens under the

Collateral Documents and (G) the Successor Borrower agrees to provide any documentation and other information about such Successor Borrower as shall have been reasonably requested in writing by any Lender through the Administrative Agent that is required by regulatory authorities or under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and the Beneficial Ownership Regulation; *provided, further*, that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the applicable Borrower under this Agreement; and



(e) so long as no Default exists or would result therefrom (in the case of a merger involving a Loan Party), any Restricted Subsidiary may merge or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary or the Lead Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) so long as no Default exists or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05;

(g) [Reserved];

(h) [Reserved]; and

(i) the Lead Borrower and its Subsidiaries may consummate Permitted Intercompany Activities.

Section 7.05. *Dispositions.* The Lead Borrower or any of the Restricted Subsidiaries shall not, directly or indirectly, make any Disposition, except:

(a) (i) Dispositions of obsolete, non-core, worn out, damaged or surplus property, whether now owned or hereafter acquired or other property of the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice, (ii) Dispositions of property no longer used or useful or economically practical to maintain in the conduct of the business of the Lead Borrower or any of the Restricted Subsidiaries and (iii) Dispositions of property held for sale or no longer used or useful or necessary in the operation of the business of the Lead Borrower and the Restricted Subsidiaries;

(b) Dispositions of inventory or goods held for sale and immaterial assets, in each case, in the ordinary course of business or consistent with past practice;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to Holdings, the Lead Borrower or any of the Restricted Subsidiaries; *provided* that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02 (other than Section 7.02(e));

(e) to the extent constituting Dispositions, transactions permitted by Sections 7.01, 7.02 (other than Section 7.02(e)), 7.04 (other than Section 7.04(f)) and 7.06;

(f) Dispositions contemplated as of the Closing Date and listed on Schedule 7.05(f);

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business or consistent with past practice and which do not materially interfere with the business of the Lead Borrower or any of the Restricted Subsidiaries and (ii) Dispositions of IP Rights (including allowing any registrations or any applications for registration of any immaterial IP Rights to lapse or

go abandoned) that do not materially interfere with the business of the Lead Borrower or any of the Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event;

(j) Dispositions of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary; *provided* that (i) such Disposition is for fair market value (as determined in good faith by the Lead Borrower) and (ii) the Lead Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Sections 7.01(a), (f), (k), (p), (q), (r)(i), (r)(ii), (dd) (only to the extent the Obligations are secured by such cash and Cash Equivalents) and (ee) (only to the extent the Obligations are secured by such cash and Cash Equivalents)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash:

(A) the greater of the principal amount and the carrying value of any liabilities (as shown on the Lead Borrower's (or the Restricted Subsidiaries', as applicable) most recent consolidated balance sheet provided hereunder or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been shown on the Lead Borrower's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the Lead Borrower) of the Lead Borrower or such Restricted Subsidiary, other than liabilities (other than intercompany liabilities owing to a Restricted Subsidiary being Disposed of) that are by their terms subordinated to the payment in cash of the Obligations, (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) pursuant to a written agreement which releases or indemnifies the Lead Borrower or such Restricted Subsidiary from such liabilities or (ii) otherwise cancelled or terminated in connection with the transaction,

(B) any securities, notes or other obligations or assets received by the Lead Borrower or the applicable Restricted Subsidiary from such transferee that are converted, or reasonably expected to be converted, by the Lead Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received or expected to be received) or by their terms are required to be satisfied for Cash Equivalents within 180 days following the closing of the applicable Disposition, and

(C) aggregate non-cash consideration received by the Lead Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$125,000,000 and 21% of LTM Consolidated EBITDA at any time (net of any non-cash consideration converted into cash and Cash Equivalents), with the fair market value of each item of such non-cash consideration being measured without giving effect to subsequent changes in value;

(k) the sale, assignment, licensing, sub-licensing or other Disposition of IP Rights or other general intangibles pursuant to any Intercompany License Agreement;

(l) Dispositions or discounts without recourse of accounts receivable, or participations therein, or Securitization Assets or related assets, or any disposition of the Equity Interests in a Subsidiary, all or substantially all of the assets of which are Securitization Assets, in each case in connection with any Qualified Securitization Facility

or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business;

(m) Dispositions of property pursuant to any Sale and Lease-Back Transaction or lease- leaseback transactions on fair market terms so long as the Net Proceeds thereof shall be applied in accordance with Section 2.05(b)(ii);

(n) any swap of assets in exchange for services or other assets of comparable or greater value or usefulness to the business of the Lead Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Lead Borrower;

(o) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary (other than Unrestricted Subsidiaries the primary assets of which are cash and/or Cash Equivalents) (or a Restricted Subsidiary which owns an Unrestricted Subsidiary so long as such Restricted Subsidiary owns no assets other than the Equity Interests of such an Unrestricted Subsidiary);

(p) the unwinding of any Swap Contract pursuant to its terms;

(q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights that are no longer used or useful or economically practicable or commercially reasonable to maintain;

(s) Permitted Intercompany Activities;

(t) Dispositions of assets (i) acquired pursuant to or in order to effectuate a Permitted Acquisition which assets are not used or useful to the core or principal business of the Lead Borrower and the Restricted Subsidiaries or (ii) that are made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Lead Borrower to consummate any acquisition;

(u) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims, in each case, in the ordinary course of business;

(v) the issuance of directors' qualifying shares and shares issued to foreign nationals as required by applicable law;

(w) [reserved];

(x) any sale of property or assets, if the acquisition of such property or assets was financed with Excluded Contributions and the proceeds of such sale are used to make Investments or Restricted Payments pursuant to Sections 7.02(y) or 7.06(o); and

(y) Dispositions of property which yields net cash proceeds to the Lead Borrower or any of its Restricted Subsidiaries of \$75,000,000 or less in the aggregate for any such Disposition or series of related Dispositions.

*provided* that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(e), (i), (k), (p), (r) and (s) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Lead Borrower in good faith. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent or the Collateral Agent, as applicable, shall take any actions deemed appropriate in order to effect the foregoing. At the option of the Lead Borrower, the foregoing determination and calculations may be made

(i) at the time the definitive agreement with respect to such Disposition has been signed or (ii) at the time such Disposition is consummated.

Notwithstanding anything in this Agreement to the contrary, no Loan Party or Restricted Subsidiary shall contribute, sell, transfer or otherwise dispose of any intellectual property (A) that was owned by any Loan Party or

Restricted Subsidiary on the Closing Date and (B) that is material (at the time of such contribution, sale, transfer or other disposition) to the business of the Lead Borrower and its Restricted Subsidiaries, taken as a whole.

Section 7.06. *Restricted Payments.* The Lead Borrower or any of the Restricted Subsidiaries shall not, directly or indirectly, declare or make any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Lead Borrower and the other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Lead Borrower and any other Restricted Subsidiary, as compared to the other owners of Equity Interests in such Restricted Subsidiary, on a pro rata or more than pro rata basis based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Lead Borrower and each Restricted Subsidiary may declare and make Restricted Payments payable solely in Preferred Stock existing as of the Closing Date of the Lead Borrower or any of its Restricted Subsidiaries permitted by any provision of Section 7.03 in an aggregate amount not to exceed \$12,500,000 in any fiscal year of the Lead Borrower (subject to a carry-forward of unused or deferred amounts in any fiscal year to the subsequent fiscal year and carry-back of the amount available in the subsequent fiscal year to the current fiscal year);

(c) [reserved];

(d) so long as no Event of Default has occurred and is continuing or would result therefrom, the Lead Borrower and the Restricted Subsidiaries may make Restricted Payments in an unlimited amount so long as the Consolidated Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 2.00 to 1.00;

(e) to the extent constituting Restricted Payments, the Lead Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Sections 7.02 (other than Sections 7.02(e) and (m)), 7.04 or 7.07 (other than Sections 7.07(e) and (j));

(f) repurchases of Equity Interests in the Lead Borrower (or any direct or indirect parent thereof) or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(g) the Lead Borrower and each Restricted Subsidiary may pay (or make Restricted Payments to allow the Lead Borrower or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Restricted Subsidiary (or of the Lead Borrower or any other such direct or indirect parent thereof) from any future, present or former employee, officer, director, manager, member, partner, independent contractor or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) of such Restricted Subsidiary (or the Lead Borrower or any other direct or indirect parent of such Restricted Subsidiary) or any of its Subsidiaries upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee, manager, officer, member, partner, independent contractor or director stock option plan or any other employee, manager, officer, member, partner, independent contractor or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, manager, director, officer, member, partner, independent contractor or consultant of such Restricted

Subsidiary (or the Lead Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; provided that the aggregate amount of Restricted Payments made pursuant to this clause (g) shall not exceed \$25,000,000 in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$50,000,000 in any calendar year); provided, further, that such amount in any calendar year may be increased by an amount not to exceed:

- (i) to the extent contributed to the Lead Borrower, the net cash proceeds from the sale of Equity Interests (other than Disqualified Equity Interests or Designated Equity



Contributions) of any of the Lead Borrower' direct or indirect parent companies, in each case to any future, present or former employees, officers, members of management, managers, partners, independent contractors, directors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Lead Borrower, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Closing Date, to the extent net cash proceeds from the sale of such Equity Interests have been Not Otherwise Applied; *plus*

(ii) the net cash proceeds of key man life insurance policies received by the Lead Borrower or its Restricted Subsidiaries; *less*

(iii) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (i) and (ii) of this Section 7.06(g);

(h) the Lead Borrower or any Restricted Subsidiary may make Restricted Payments in an aggregate amount not to exceed, when combined with prepayment of Indebtedness pursuant to Section 7.10(a)(v), (x) the greater of (i) \$150,000,000 and (ii) 25% of LTM Consolidated EBITDA, *plus* (y) subject to no Event of Default having occurred and continuing or resulting therefrom, the portion, if any, of the Cumulative Credit on such date that the Lead Borrower elects to apply to this clause (h); *provided* that with respect to any utilization of clause (b) of the definition of "Cumulative Credit", the Consolidated Total Net Leverage Ratio calculated on a Pro Forma Basis after giving effect to such Restricted Payment shall not be less than or equal to 3.50 to 1.00;

(i) the Lead Borrower or any of its Restricted Subsidiaries may make Restricted Payments to Holdings and any direct or indirect parent of Holdings:

(i) to pay its organizational, operating costs and other costs and expenses (including, without limitation, expenses related to auditing or other accounting or tax reporting matters) incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Lead Borrower and the Restricted Subsidiaries, any costs, expenses and liabilities incurred by the Lead Borrower in connection with any litigation or arbitration attributable to the ownership or operations of the Lead Borrower and the Restricted Subsidiaries, Transaction Expenses and any reasonable and customary indemnification claims made by directors, managers or officers of such parent attributable to the ownership or operations of the Lead Borrower and the Restricted Subsidiaries;

(ii) the proceeds of which shall be used by Holdings or such parent to pay franchise and similar Taxes, and other fees and expenses, required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period (i) for which the Lead Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar foreign, federal, state or local income or similar tax group that includes the Lead Borrower and/or its Subsidiaries and whose common parent is a direct or indirect parent of the Lead Borrower (a "Tax Group") or (ii) for which the Lead Borrower is a disregarded entity or a partnership with a direct or indirect corporate parent (a "Corporate Parent"), to the extent such income or similar Taxes are attributable to the income of the Lead Borrower and/or its Restricted Subsidiaries, as applicable, and, to the extent of any cash amounts actually received from its Unrestricted Subsidiaries for such purpose, to the income of such Unrestricted Subsidiaries, to pay the portion of such U.S. federal, state and local and/or foreign income or similar Taxes (as applicable) of such Tax Group or such Corporate Parent that

are attributable to the taxable income of the Lead Borrower and/or its applicable Subsidiaries; provided, that in each case the amount of such payments in respect of any taxable year does not exceed the amount that the Lead Borrower and/or its applicable Restricted Subsidiaries (and, to the extent permitted above, its applicable Unrestricted Subsidiaries), as

applicable, would have been required to pay in respect of the relevant foreign, federal, state or local income or similar Taxes for such taxable year had the Lead Borrower and/or its applicable Subsidiaries (including its Unrestricted Subsidiaries to the extent described above), as applicable, paid such Taxes separately from any such parent company for all relevant taxable periods, provided that any distributions in respect of any taxable period (or portion thereof) ending on or before the Closing Date shall be permitted only to the extent relating to income tax adjustments that arise after the Closing Date as a result of tax audits or other tax proceedings;

(iv) to finance any Investment that would be permitted to be made pursuant to Section 7.02 (other than Section 7.02(e)) if Holdings or such parent were subject to such Section 7.02; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Lead Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Lead Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which shall be used to pay customary salary, bonus, indemnity and other benefits payable to future, present or former officers, directors, managers, members, partners, consultants, independent contractors or employees of the Lead Borrower or any direct or indirect parent company of the Lead Borrower to the extent such salaries, bonuses, indemnity and other benefits are attributable to the ownership or operation of Holdings, the Lead Borrower and the Restricted Subsidiaries;

(vi) the proceeds of which shall be used by the Lead Borrower to pay (or to make Restricted Payments to allow Holdings or any direct or indirect parent thereof to pay) fees and expenses (other than to Affiliates) related to any equity or debt offering, financing transaction, acquisition, divestiture, investment or other non-ordinary course transaction not prohibited by this Agreement (whether or not successful); *provided* that any such transaction was in the good faith judgment of the Lead Borrower intended to be for the benefit of the Lead Borrower and its Restricted Subsidiaries; and

(j) payments made or expected to be made by the Lead Borrower or any of the Restricted Subsidiaries in respect of required withholding or similar Taxes payable upon or in connection with the exercise or vesting of Equity Interests or any other equity award with respect to any future, present or former employee, director, manager, officer, partner, independent consultant or consultant (or their respective Controlled Investment Affiliates and Immediate Family Members) and any repurchases or withholdings of Equity Interests in consideration of such payments including in connection with the exercise or vesting of stock options, warrants or the issuance of restricted stock units or similar stock based awards;

(k) the Lead Borrower or any Restricted Subsidiary may (i) make, or may make Restricted Payments or distributions to Holdings to permit it to make, payments of cash in lieu of fractional Equity Interests of the Lead Borrower or any direct or indirect parent company of the Lead Borrower in connection with any dividend, distribution, split, merger, consolidation, amalgamation or combination thereof or any Permitted Acquisition and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(l) Restricted Payments in an aggregate amount per annum not to exceed 5.00% of Market Capitalization;

(m) distributions or payments of Securitization Fees;

(n) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a consolidation, merger or transfer of assets permitted by Section 7.02 (other than Section 7.02(e)) or Section 7.04;

(o) Restricted Payments that are made in (i) an amount equal to the amount of Excluded Contributions previously received and the Lead Borrower elects to apply under this clause (o) or (ii) without duplication with clause (i), in an amount equal to the Net Proceeds from a Disposition in respect of property or assets acquired after the Closing Date, if the acquisition of such property or assets was financed with Excluded Contributions, in each case, to the extent Not Otherwise Applied;

(p) [Reserved];

(q) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or the giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Agreement;

(r) Restricted Payments under hedge and warrant or other derivative transactions entered into in connection with the issuance of any Permitted Convertible Notes Offering (including payments to Holdings or another direct or indirect parent of the Lead Borrower in respect of such transactions related to its convertible Indebtedness, to the extent such convertible Indebtedness is guaranteed by the Lead Borrower or any of its Restricted Subsidiaries in accordance with this Agreement) or any early termination thereof;

(s) the making of cash payments in satisfaction of the conversion obligation upon conversion of convertible Indebtedness issued in any Permitted Convertible Notes Offering (including payments to Holdings or another direct or indirect parent of the Lead Borrower in respect of its convertible Indebtedness, to the extent guaranteed by the Lead Borrower or any of its Restricted Subsidiaries in accordance with this Agreement); provided that, to the extent the aggregate amount of such cash payments made since the Closing Date exceeds the sum of (x) the principal amount of such convertible Indebtedness plus (y) the amount of any payments received by the Lead Borrower or any of its Restricted Subsidiaries since the Closing Date pursuant to the exercise, settlement or termination in connection with convertible Indebtedness such cash payments shall be subtracted from the Cumulative Credit;

(t) so long as no Event of Default has occurred and is continuing or would result therefrom, the declaration and payment of dividends to the Lead Borrower or any direct or indirect parent company of Lead Borrower, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Equity Interests) issued by the Lead Borrower or such parent company after the Closing Date, provided that the amount of dividends paid pursuant to this clause (t) shall not exceed the aggregate amount of cash actually contributed to the Lead Borrower from the sale of such Designated Preferred Stock;

(u) (i) the redemption, repurchase, defeasance, retirement or other acquisition of any Equity Interests (“**Treasury Capital Stock**”), including any accrued and unpaid dividends thereon, of the Lead Borrower or any Restricted Subsidiary or any Equity Interests of the Lead Borrower or any direct or indirect parent company of the Lead Borrower, in exchange for, or in an amount not to exceed the proceeds of, the sale or issuance, within 120 days of such redemption, repurchase, retirement or other acquisition (other than to a Restricted Subsidiary) of Equity Interests of Lead Borrower or any direct or indirect parent company of the Lead Borrower to the extent contributed to the Lead Borrower (in each case, other than any Disqualified Equity Interests) (“**Refunding Capital Stock**”), (ii) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent

sale or issuance (other than to a Subsidiary of the Lead Borrower or to an employee stock ownership plan or any trust established by the Lead Borrower or any of its Subsidiaries) of Refunding Capital Stock, (iii) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clauses (u)(i) or (i) of this Section 7.06, the declaration and payment of dividends on the Refunding

Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Lead Borrower) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement, and

(iv) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to this Section 7.06(u); *provided*, in the case of each of this clause (u)(iv), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, the Lead Borrower or any of its Restricted Subsidiaries could incur \$1.00 of additional Indebtedness pursuant to Section 7.03(s); and

(v) the Lead Borrower or any Restricted Subsidiary may declare and pay dividends or other distributions with respect to its Equity Interests payable solely in additional shares of its Qualified Equity Interests or options to purchase Qualified Equity Interests.

For purposes of determining compliance with this Section 7.06, in the event that a Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described above, the Lead Borrower may, in its sole discretion, classify or later divide, classify or reclassify all or a portion of such Restricted Payment or any portion thereof in a manner that complies with this Section 7.06 and will only be required to include the amount and type of such Restricted Payment in one or more of the above clauses. In the event that a Restricted Payment or other obligations could be classified as incurred under a “ratio-based” basket (giving pro forma effect to the making of such portion of such Restricted Payment), the Lead Borrower, in its sole discretion, may classify such portion of such Restricted Payment (and any obligations in respect thereof) as having been made pursuant to such “ratio-based” basket and thereafter the remainder of the Restricted Payment as having been made pursuant to one or more of the other clauses of this Section 7.06.

Section 7.07. *Transactions with Affiliates.* The Lead Borrower shall not, nor shall the Lead Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, enter into any transaction of any kind with any Affiliate of the Lead Borrower, whether or not in the ordinary course of business, involving aggregate payments or consideration in excess of \$50,000,000, other than (a) loans and other transactions among Holdings, the Lead Borrower and the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such loan or other transaction to the extent permitted under this Article 7, (b) on terms substantially as favorable to the Lead Borrower or such Restricted Subsidiary as would be obtainable by the Lead Borrower or such Restricted Subsidiary at the time in a comparable arm’s-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of Transaction Expenses as part of or in connection with the Transactions, (d) compensation and other customary arrangements relating to the operation of the business of the Lead Borrower, any of its direct or indirect parent companies and its Restricted Subsidiaries, (e) Restricted Payments permitted under Section 7.06 (other than Section 7.06(e)), Investments permitted under Section 7.02 and prepayments redemptions, purchases, defeasances and other payments permitted by Section 7.10, (f) employment and severance arrangements between the Lead Borrower, any of its direct or indirect parent companies and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business or consistent with past practice and transactions pursuant to equity-based plans and employee benefit plans and arrangements in the ordinary course of business, (g) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of Holdings, the Lead Borrower and the Restricted Subsidiaries (or any direct or indirect parent of Holdings) in the ordinary course of business to the extent attributable to the ownership or operation of the Lead Borrower, any

of its direct or indirect parent companies and the Restricted Subsidiaries, (h) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.07 or any amendment thereto to the extent such an amendment is not materially adverse to the Lenders in any material respect,

(i) contemporaneous purchases and/or sales by the Lead Borrower or any of its Restricted Subsidiaries and an Affiliate of the Lead Borrower, of assets, Capital Stock, bonds, notes, debentures or other debt securities, and bank loans, participations or similar obligations of third parties at substantially the same price, (j) payments by the Lead Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with the Lead Borrower or any direct or indirect parent of the Lead Borrower to the extent attributable to the ownership or operation of Holdings, the Lead Borrower and its Subsidiaries, but only to the extent permitted by Section 7.06(i)(iii), (k) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of the Lead Borrower to any Permitted Holder or to any



former, present or future director, manager, officer, employee or consultant (or any Affiliate or any Immediate Family Member of any of the foregoing) of Holdings, any of its Subsidiaries or any direct or indirect parent thereof,

(l) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, (m) Permitted Intercompany Activities, (n) a joint venture which would constitute a transaction with an Affiliate solely as a result of Holdings, the Lead Borrower or any Restricted Subsidiary owning an equity interest or otherwise controlling such joint venture or similar entity, (o) transactions with any Affiliated Lender in its capacity as a Lender party to any Loan Document or party to any agreement, document or instrument governing or relating to any Indebtedness permitted to be incurred pursuant to Section 7.03 (including Permitted Refinancings thereof) to the extent such Affiliated Lender is being treated no more favorably than all other Lenders or lenders thereunder, (p) [reserved], (q) the issuance of Qualified Equity Interests of the Lead Borrower or Holdings and the granting of registration or other customary rights in connection therewith and (r) any transaction in which the only consideration paid by the Lead Borrower or any of the Restricted Subsidiaries is in the form of Qualified Equity Interests of the Lead Borrower or any direct or indirect parent of the Lead Borrower to Affiliates of the Lead Borrower, or any contribution to the capital of the Lead Borrower or any Restricted Subsidiary (other than in consideration of Disqualified Equity Interests).

Section 7.08. *Burdensome Agreements.* The Lead Borrower shall not, nor shall the Lead Borrower permit any of the Restricted Subsidiaries to, enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that prohibits (a) any Restricted Subsidiary of the Lead Borrower that is not a Guarantor to make Restricted Payments to a Borrower or any Subsidiary Guarantor or to make or repay intercompany loans and advances to a Borrower or any Subsidiary Guarantor or (b) the Lead Borrower or any Subsidiary Guarantor to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.08) are listed on Schedule 7.08 hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation, (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Lead Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Lead Borrower; *provided, further,* that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Restricted Subsidiary pursuant to Section 6.14, (iii) [reserved], (iv) arise in connection with (x) any Lien permitted by Section 7.01 and relate to the property subject to such Lien or (y) any Disposition permitted by Sections 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03 and to the extent that such restrictions apply only to the property or assets securing such Indebtedness or to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Lead Borrower or any Restricted Subsidiary or the assignment of any license or sublicense agreement, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business or consistent with past practice, (xii) are restrictions created in connection with any Qualified Securitization Facility that in the good faith determination of the Lead Borrower are necessary or advisable to effect such Qualified Securitization Facility and relate solely to the Securitization Assets subject thereto, (xiii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit and (xiv) are customary restrictions contained in any Senior Secured Notes Documents or any Permitted Refinancing thereof.

Section 7.09. *Financial Covenant.* Except with the written consent of the Required Financial Covenant Lenders, the Lead Borrower will not permit the Consolidated First Lien Net Leverage Ratio as of the last day of a

Test Period (commencing with the Test Period ending on or about March 31, 2022) to exceed 3.50 to 1.00 (the “**Financial Covenant**”).

Section 7.10. *Prepayments, Etc. of Indebtedness.*

(a) The Lead Borrower shall not, nor shall the Lead Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that (A) payments of regularly scheduled principal and interest, (B) customary “AHYDO catchup” payments and (C) any prepayment, redemption, purchase, defeasance or other retirement in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of such prepayment redemption, purchase, defeasance or other retirement thereof shall be permitted), any principal amount in respect of any subordinated Indebtedness incurred under Section 7.03(g), (q) or (s) or any other Indebtedness that is or is required to be subordinated, in right of payment to the Obligations pursuant to the terms of the Loan Documents (collectively, “**Junior Financing**”), in each case, in an amount in excess of the Threshold Amount or make any payment in violation of any subordination terms of any Junior Financing Documentation, except (i) the refinancing thereof with the Net Proceeds of any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), (q) or (s), is permitted pursuant to Section 7.03(g), (q) or (s)), to the extent not required to prepay any Loans pursuant to Section 2.05(b), (ii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of the Lead Borrower or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Lead Borrower or any Restricted Subsidiary to the Lead Borrower or any Restricted Subsidiary to the extent not prohibited by the subordination provisions contained in the Intercompany Note, (iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in (x) an amount equal to the amount of Excluded Contributions previously received and the Lead Borrower elects to apply under this clause (iv) or (y) without duplication with clause (x), in an amount equal to the Net Proceeds from a Disposition in respect of property or assets acquired after the Closing Date, if the acquisition of such property or assets was financed with Excluded Contributions, in each case, to the extent Not Otherwise Applied, (v) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed, when combined with the amount of Restricted Payments pursuant to Section 7.06(h), (x) the greater of (I) \$250,000,000 and (II) 42% of LTM Consolidated EBITDA *plus* (y) subject to no Event of Default under Section 8.01(a) or (f) with respect to Holdings or the Lead Borrower having occurred and continuing or resulting therefrom, the portion, if any, of the Cumulative Credit on such date that the Lead Borrower elects to apply to this clause (a), (vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed the Available RP Capacity Amount, (vii) so long as no Event of Default under Section 8.01(a) or (f) has occurred and is continuing or would result therefrom, prepayments, redemptions, or purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an unlimited amount so long as the Consolidated Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 2.25 to 1.00, (viii) the prepayment, defeasance, redemption, repurchase, exchange or other acquisition or retirement of Junior Financing of the Lead Borrower or any Restricted Subsidiary or any Equity Interests of the Lead Borrower or any direct or indirect parent company of the Lead Borrower, in exchange for, or in an amount not to exceed the proceeds of, the sale or issuance, within 120 days of such prepayment, defeasance, redemption, repurchase, exchange or other acquisition or retirement of Refunding Capital Stock and (ix) the prepayment, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (a) Junior Financing of the Lead Borrower or any Restricted Subsidiary made by exchange for, or in an amount not to exceed the proceeds of the sale of, new Indebtedness of the

Lead Borrower or any Restricted Subsidiary or Disqualified Equity Interests of the Lead Borrower or any Restricted Subsidiary made within 120 days of such incurrence or issuance of new Indebtedness or Disqualified Equity Interests or (b) Disqualified Equity Interests of the Lead Borrower or any Restricted Subsidiary made by exchange for, or in an amount not to exceed the proceeds of the sale of, Disqualified Equity Interests of the Lead Borrower or any Restricted Subsidiary made within 120 days of such issuance of Disqualified Equity Interests, that, in each case, is incurred or issued, as applicable, in compliance with Section 7.03 so long as (i) the principal amount (or accreted value, if applicable) of such new Indebtedness or the liquidation preference of such new Disqualified Equity Interests does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Junior Financing or the liquidation preference of, plus any accrued and unpaid

dividends on, the Disqualified Equity Interests being so prepaid, defeased, redeemed, repurchased, exchanged, acquired or retired for value, plus the amount of any premium (including tender premium) paid on the Junior Financing or Disqualified Equity Interests being so defeased, redeemed, repurchased, exchanged, acquired or retired, defeasance costs and any fees and expenses incurred in connection with the issuance of such new Indebtedness or Disqualified Equity Interests; (ii) such new Indebtedness is subordinated to the Loans or the applicable Guarantee at least to the same extent as such Junior Financing so defeased, redeemed, repurchased, exchanged, acquired or retired; (iii) such new Indebtedness or Disqualified Equity Interests has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Junior Financing or Disqualified Equity Interests being so defeased, redeemed, repurchased, exchanged, acquired or retired; and (iv) such new Indebtedness or Disqualified Equity Interests has a weighted average life to maturity equal to or greater than the remaining weighted average life to maturity of the Junior Financing or Disqualified Equity Interests being so defeased, redeemed, repurchased, exchanged, acquired or retired.

(b) The Lead Borrower shall not, nor the Lead Borrower permit any of the Restricted Subsidiaries to amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed).

For purposes of determining compliance with this Section 7.10, in the event that a payment meets the criteria of more than one of the categories of payments described above, the Lead Borrower may, in its sole discretion, classify or later divide, classify or reclassify all or a portion of such payment or any portion thereof in a manner that complies with this Section 7.10 and will only be required to include the amount and type of such payment in one or more of the above clauses. In the event that a payment or other obligations could be classified as incurred under a “ratio-based” basket (giving pro forma effect to the making of such portion of such payment), the Lead Borrower, in its sole discretion, may classify such portion of such payment (and any obligations in respect thereof) as having been made pursuant to such “ratio-based” basket and thereafter the remainder of the payment as having been made pursuant to one or more of the other clauses of this Section 7.10 and if any such test would be satisfied in any subsequent fiscal quarter following the relevant date of determination, then such reclassification may be deemed to have automatically occurred at such time.

Section 7.11. *Holdings Covenant.* Holdings shall directly own 100% of the Equity Interests of the Lead Borrower. Holdings may not pledge or grant any consensual Lien on the Equity Interests of the Lead Borrower to any Person other than (a) Liens granted to the Administrative Agent for the benefit of the Secured Parties and (b) Liens granted to secure obligations permitted to be secured pursuant to clauses (a), (aa), (bb), (cc), (dd), (ee), (ii) and (oo) of Section 7.01.

## ARTICLE 8

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default.* Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* Holdings, the Borrowers or any Restricted Subsidiary fails to perform or observe any applicable term, covenant or agreement contained in any of Section 6.03(a), 6.05(a) (solely with respect to the Borrowers), 6.16 or Article 7; *provided* that a Default as a result of a breach of Section 7.09 (a “**Financial Covenant Event of Default**”) is subject to cure pursuant to Section 8.05; *provided, further*, that a Financial Covenant Event of Default or any breach of a financial maintenance covenant under any Incremental Revolving Credit Loan or any

revolving facility that constitutes Credit Agreement Refinancing Indebtedness shall not constitute an Event of Default with respect to any Term B Loans unless and until the Revolving Credit Lenders and the Term A Lenders have declared all amounts

outstanding under the Revolving Credit Facility and the Term A Facility to be immediately due and payable and all outstanding Revolving Credit Commitments to be immediately terminated, in each case in accordance with this Agreement and such declaration has not been rescinded on or before such date (the “**Term B Loan Standstill Period**”); or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Sections 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after written notice thereof by the Administrative Agent to the Lead Borrower; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers or any Restricted Subsidiary herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made and, to the extent capable of being cured, such incorrect representation or warranty shall remain incorrect for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrowers; or

(e) *Cross-Default.* Any Borrower or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an outstanding aggregate principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any Indebtedness having an outstanding aggregate principal amount of not less than the Threshold Amount, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (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 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; *provided* that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (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 sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Judgments.* There is entered against any Borrower or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(h) *Change of Control.* There occurs any Change of Control; or

(i) *Collateral Documents.* Any Collateral Document after delivery thereof pursuant to Sections 4.01, 6.11, 6.13, 6.16 and the Security Agreement shall for any reason (other than pursuant to the terms thereof including as a result of a transaction not prohibited under this Agreement) cease to create a



valid and perfected Lien, with the priority required by the Collateral Documents and the Intercreditor Agreements on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or any loss thereof results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements;

(j) *ERISA.* (i) An ERISA Event occurs which has resulted or would reasonably be expected to result in liability of any Borrower or a Restricted Subsidiary or any ERISA Affiliate in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect, or (ii) any Borrower, any Restricted Subsidiary 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 which has resulted or would reasonably be expected to result in liability of any Borrower or a Restricted Subsidiary or any ERISA Affiliate in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(k) *Invalidity of Guaranty.* Any material provision of the Guaranty, at any time after the execution and delivery of this Agreement and for any reason other than as expressly permitted hereunder (including as a result of a transaction permitted under Sections 7.04 or 7.05) or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of the Guaranty or; or any Loan Party denies in writing that it has any or further liability or obligation under the Guaranty (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind the Guaranty.

Section 8.02. *Remedies Upon Event of Default.* If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions (or, if a Financial Covenant Event of Default occurs and is continuing and prior to the expiration of the Term B Loan Standstill Period, at the request of the Required Financial Covenant Lenders only, and in such case only with respect to the Term A Loans, Revolving Credit Commitments, Revolving Credit Loans, Swing Line Loans, L/C Obligations, any Letters of Credit and L/C Credit Extensions):

(i) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) 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;

(iii) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* that upon the occurrence of an actual or deemed entry of an order for relief with respect to Holdings or the Borrowers under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers 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.

Section 8.03. *Exclusion of Immaterial Subsidiaries.* Solely for the purpose of determining whether a Default or Event of Default has occurred under Section 8.01(f), any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Restricted Subsidiary (an “**Immaterial Subsidiary**”) affected by any event or circumstances referred to in any such clause that did not, as of the last day of the most recent completed fiscal quarter of the Lead Borrower, have assets with a fair market value in excess of 2.5% of Total Assets (it being agreed that all Restricted Subsidiaries affected by any event or circumstance referred to in any such clause shall be considered together, as a single consolidated Restricted Subsidiary, for purposes of determining whether the condition specified above is satisfied).

Section 8.04. *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 any Intercreditor Agreements then in effect, be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article 3) payable to the Administrative Agent or the Collateral 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 payments under Secured Hedge Agreements, Treasury Services Obligations and Bilateral Letter of Credit Facilities) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article 3), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting (a) accrued and unpaid interest on the Loans, L/C Borrowings and pursuant to Bilateral Letter of Credit Facilities, and (b) any fees, premiums and scheduled periodic payments due under Treasury Services Obligations or Secured Hedge Agreements, ratably among the Secured Parties 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 letters of credit under Bilateral Letter of Credit Facilities (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit and to cash collateralize that portion of the obligations under Bilateral Letter of Credit Facilities comprised of the aggregate undrawn amount of letters of credit thereunder), and any breakage, termination or other payments under Treasury Services Obligations or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Borrowers that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrowers or as otherwise required by Law.

Subject to Section 2.03(g), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit or Bilateral Letter of Credit Facilities 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 and, if no Obligations remain outstanding, to the Borrowers as applicable. Notwithstanding the foregoing, no amounts received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Notwithstanding any other provision of this Section 8.04 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 Treasury Services Obligations, Secured Hedge Agreements or Bilateral Letter of Credit Facilities 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 Bilateral Letter of Credit Facility Bank or other holder of obligations under Treasury Services Obligations or Secured Hedge Agreements, as the case may be.

Section 8.05. *Right to Cure.*

(a) Notwithstanding anything to the contrary contained in Sections 8.01 or 8.02, if the Lead Borrower determines that an Event of Default under the covenant set forth in Section 7.09 has occurred or may occur, during the period commencing after the beginning of the last fiscal quarter included in such Test Period and ending ten (10) Business Days after the date on which financial statements are required to be delivered hereunder with respect to such fiscal quarter (the “**Cure Expiration Date**”), a Specified Equity Contribution may be made to Holdings and contributed to the Lead Borrower as common equity (a “**Designated Equity Contribution**”), and the amount of the net cash proceeds thereof shall be deemed to increase Consolidated EBITDA with respect to such applicable quarter for such Test Period and applicable subsequent Test Periods which include such fiscal quarter; *provided* that such net cash proceeds (i) are actually received by the Lead Borrower as cash common equity (including through capital contribution of such net cash proceeds to the Lead Borrower) during the period commencing after the beginning of the last fiscal quarter included in such Test Period by the Lead Borrower and ending on the Cure Expiration Date and (ii) are Not Otherwise Applied. The parties hereby acknowledge that this Section 8.05(a) may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.09 and shall not result in any adjustment to any baskets or other amounts other than the amount of the Consolidated EBITDA for the purpose of Section 7.09. Notwithstanding anything to the contrary contained in Section 8.01 and Section 8.02, (A) upon designation of the Designated Equity Contribution by the Lead Borrower in an amount necessary to cure any Event of Default under the covenant set forth in Section 7.09, such covenant will be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with such covenant and any Event of Default under such covenant (and any other Default as a result thereof) will be deemed not to have occurred for purposes of the Loan Documents, and (B) from and after the date that the Lead Borrower delivers a written notice to the Administrative Agent that it intends to exercise its cure right under this Section 8.05 (a “**Notice of Intent to Cure**”) neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the covenant set forth in Section 7.09 with respect to the quarter for which a Notice of Intent to Cure has been provided (and any other Default as a result thereof).

(b) (i) In each period of four consecutive fiscal quarters, there shall be at least two fiscal quarters in which no Designated Equity Contribution is made, (ii) no more than five Designated Equity Contributions may be made in the aggregate during the term of this Agreement, (iii) the amount of any Designated Equity Contribution shall be no more than the amount required to cause the Lead Borrower to be in Pro Forma Compliance with Section 7.09 for any applicable period, (iv) there shall be no pro forma reduction in Indebtedness with the proceeds of any Designated Equity Contribution for determining compliance with Section 7.09 for the fiscal quarter with respect to which such Designated Equity Contribution was made; *provided* that to the extent such proceeds are actually applied to prepay Indebtedness, such reduction may be credited in any subsequent fiscal quarter and (v) other than as set forth in the proviso to clause (iv) above, the foregoing may not be relied on for purposes of calculating any financial ratios other than compliance with the Financial Covenant and shall not result in any adjustment to any “baskets” or other amounts other than the amount of Consolidated EBITDA referred to in clause (a) above. No Borrower shall be permitted to request any Credit Extension after delivery of a Notice of Intent to Cure but on or prior to the Cure Expiration Date.

ARTICLE 9 ADMINISTRATIVE AGENT  
AND OTHER AGENTS

Section 9.01. *Appointment and Authorization of Agents.*

(a) Each Lender hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents, designates and authorizes each of the Administrative Agent and the Collateral Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, neither the Administrative Agent nor the Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent or the Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “**agent**” herein and in the other Loan Documents with reference to any 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article 9 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “**Agent**” as used in this Article 9 and in the definition of “**Agent-Related Person**” included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) Each of the Secured Parties (by acceptance of the benefits of the Collateral Documents) hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Secured Party for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 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 Collateral Agent), shall be entitled to the benefits of all provisions of this Article 9 (including Section 9.07, 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.

(d) Each Lender and each other Secured Party (by acceptance of the benefits of the Collateral Documents) hereby (i) acknowledges that it has received a copy of the Intercreditor Agreements, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements to the extent then in effect, and (iii) authorizes and instructs the Collateral Agent to enter into each Intercreditor Agreement as Collateral Agent and on behalf of such Lender or Secured Party.

(e) Except as provided in Sections 9.09 and 9.11, the provisions of this Article 9 are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Lead Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 9.02. *Delegation of Duties.* Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent, the Collateral 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 Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent, the Collateral Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent or Collateral Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final non-appealable judgment of a court of competent jurisdiction).

Section 9.03. *Liability of Agents.* No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), (b) except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any 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 or any Agent-Related Person, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, (c) be responsible for or have any duty to ascertain or inquire into the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (d) be responsible in any manner to any Lender or Participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent or the Collateral Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, the existence, value or collectability of the Collateral, any failure to monitor or maintain any part of the Collateral, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. Notwithstanding the foregoing, neither the Administrative Agent nor the Collateral Agent shall 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 or Collateral Agent (as applicable) 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 or Collateral Agent (as applicable) shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or Collateral Agent (as applicable) 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.

Section 9.04. *Reliance by Agents.* Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such



Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the

Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

Section 9.05. *Notice of Default.* The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Lead Borrower referring to this Agreement, describing such Default and stating that such notice is a “**notice of default.**” The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders (or, if a Financial Covenant Event of Default occurs and is continuing and prior to the expiration of the Term B Loan Standstill Period, the Required Financial Covenant Lenders only, and in such case only with respect to the Term A Loans, Revolving Credit Commitments, Revolving Credit Loans, Swing Line Loans, L/C Obligations, Letters of Credit and L/C Credit Extensions) in accordance with Article 8; *provided* that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06. *Credit Decision; Disclosure of Information by Agents.* Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own 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 also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, 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. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with 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 which may come into the possession of any Agent-Related Person. Each Lender and each 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 each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each 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.

Section 9.07. *Indemnification of Agents.* Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so) acting as an Agent, pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of

such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction; *provided* that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07; *provided, further*, that any obligation to indemnify an L/C Issuer pursuant to this Section 9.07 shall be limited to Revolving Credit Lenders only. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each of the Administrative Agent and the Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent or the Collateral Agent, as the case may be, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent or the Collateral Agent, as the case may be, is not reimbursed for such expenses by or on behalf of the Loan Parties and without limiting their obligation to do so. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent or the Collateral Agent, as the case may be.

Section 9.08. *Agents in Their Individual Capacities.* Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrowers and its respective Affiliates as though Bank of America were not the Administrative Agent, the Collateral Agent, the Swing Line Lender or an L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding the Lead Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Lead Borrower or such Affiliate) and acknowledge that neither the Administrative Agent nor the Collateral Agent shall be under any obligation to provide such information to them. With respect to its Loans, Bank of America and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent, the Collateral Agent, the Swing Line Lender or an L/C Issuer, and the terms "**Lender**" and "**Lenders**" include Bank of America in its individual capacity. Any successor to Bank of America as the Administrative Agent or the Collateral Agent shall also have the rights attributed to Bank of America under this Section 9.08.

Section 9.09. *Successor Agents.* Each of the Administrative Agent and the Collateral Agent may resign as the Administrative Agent or the Collateral Agent, as applicable upon thirty (30) days' notice to the Lenders and the Lead Borrower and if either the Administrative Agent or the Collateral Agent is a Defaulting Lender, the Lead Borrower may remove such Defaulting Lender from such role upon ten (10) days' notice to the Lenders. If the Administrative Agent or the Collateral Agent resigns under this Agreement or is removed by the Lead Borrower, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent

(1) shall be (a) a "financial institution" within the meaning of Treasury Regulation section 1.1441-1(c)(5) and (b) either (i) a United States person (as defined in Section 7701(a)(30) of the Code) or (ii) a United States branch that is eligible to assume primary responsibility for United States federal withholding with respect to payments received on behalf of lenders pursuant to Treasury Regulation section 1.1441-1(b)(2)(iv)(A) and (2) shall be consented to by the Lead Borrower at all times other than during the existence of an Event of Default under Sections 8.01(f) (which consent of the Lead Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation or removal of the Administrative Agent or the Collateral Agent, as applicable, the Administrative Agent or the Collateral Agent, as applicable, in the case of a resignation, and the Lead Borrower, in the case of a removal may appoint, after consulting with the Lenders and the Lead Borrower (in the case of a resignation), a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent or retiring Collateral Agent and the term "**Administrative Agent**" or "**Collateral Agent**" shall mean such successor administrative agent or collateral agent and/or Supplemental Agent, as the case may be, and

the retiring Administrative Agent's or Collateral Agent's appointment, powers and duties as the Administrative Agent or Collateral Agent shall be terminated. After the retiring Administrative Agent's or the Collateral Agent's resignation or removal hereunder as the Administrative Agent or Collateral Agent, the provisions

of this Article 9 and the provisions of Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent or Collateral Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent or the Collateral Agent by the date which is thirty (30) days following the retiring Administrative Agent's or Collateral Agent's notice of resignation or ten (10) days following the Lead Borrower's notice of removal, the retiring Administrative Agent's or the retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent or Collateral Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of any appointment as the Administrative Agent or Collateral Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (b) otherwise ensure that Section 6.11 is satisfied, the Administrative Agent or Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent or Collateral Agent, and the retiring Administrative Agent or Collateral Agent shall be discharged from its duties and obligations under the Loan Documents. After the retiring Administrative Agent's or Collateral Agent's resignation hereunder as the Administrative Agent or the Collateral Agent, the provisions of this Article 9 and Sections 10.04 and 10.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent or the Collateral Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as a L/C Issuer and Swing Line Lender pursuant to Sections 2.03(q) and 2.04(h).

Section 9.10. *Administrative Agent May File Proofs of Claim; Credit Bidding.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or 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 Lead Borrower or the Collateral Agent) shall be (to the fullest extent permitted by mandatory provisions of applicable Law) 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 Collateral Agent and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Collateral Agent and the Administrative Agent and their respective agents and counsel and all other amounts due to the Lenders, the Collateral Agent and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 10.04 and 10.05) 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, curator, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent or the Collateral Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent or the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective

agents and counsel, and any other amounts due the Administrative Agent or the Collateral Agent under Sections 2.09, 10.04 and 10.05.

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 any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in

satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 10.01), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 9.11. *Collateral and Guaranty Matters.* Each Lender (including in its capacity as a counterparty to a Secured Hedge Agreement or Treasury Services Obligations) and each other Secured Party by its acceptance of the Collateral Documents irrevocably agrees:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (x) obligations under Secured Hedge Agreements, Treasury Services Obligations and Bilateral Letter of Credit Facilities not yet due and payable and (y) contingent indemnification obligations not yet accrued and payable) and the expiration or termination or cash collateralization of all Letters of Credit (or if such Letters of Credit have been backstopped by letters of credit reasonably satisfactory to the applicable L/C Issuers or deemed reissued under another agreement reasonably satisfactory to the applicable L/C Issuers), (ii) at the time the property subject to such Lien is disposed or to be disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) to the extent such asset constitutes an Excluded Asset or (v) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below;

(b) that upon the request of the Lead Borrower, the Administrative Agent and the Collateral Agent may release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(u), (w) (in the case of clause (w), to the extent required by the terms of the obligations secured by such Liens) or (ff) pursuant to documents reasonably acceptable to the Administrative Agent;



(c) that any Subsidiary Guarantor shall be automatically released from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such

Guarantor continues to be a guarantor in respect of the Senior Secured Notes or any Junior Financing with a principal amount in excess of the Threshold Amount;

(d) at the sole option of the Lead Borrower, Holdings or any existing entity constituting “Holdings” shall be released from its obligations under the Guaranty if such entity ceases to be the direct parent of the Lead Borrower as a result of a transaction or designation permitted pursuant to the definition thereof and otherwise permitted hereunder, subject to the assumption of all obligations of “Holdings” under the Loan Documents by such other Subsidiary that directly owns 100% of the issued and outstanding Equity Interests in the Lead Borrower pursuant to the definition thereof and satisfaction of the Collateral and Guaranty Requirements by such Subsidiary; *provided* that 100% of the Equity Interests of the Lead Borrower shall be pledged to the Administrative Agent to secure the Obligations; and

(e) the Collateral Agent may, without any further consent of any Lender, enter into (i) the Closing Date Intercreditor Agreement with the collateral agent or other representatives of holders of Indebtedness permitted under Section 7.03 that is permitted to be secured on a *pari passu* basis with the Liens securing the Obligations and/or (ii) a Junior Lien Intercreditor Agreement with the collateral agent or other representatives of the holders of Indebtedness permitted under Section 7.03 that is permitted to be secured on a junior Lien basis to the Liens securing the Obligations, in each case, where such Indebtedness is secured by Liens permitted under Section 7.01. The Collateral Agent may rely exclusively on a certificate of a Responsible Officer of the Lead Borrower as to whether any such other Liens are permitted. The Closing Date Intercreditor Agreement or any Junior Lien Intercreditor Agreement entered into by the Collateral Agent in accordance with the terms of this Agreement shall be binding on the Secured Parties.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s or the Collateral 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 9.11. In each case as specified in this Section 9.11, the Administrative Agent or the Collateral Agent will promptly upon the request of the Lead Borrower (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Lead Borrower’s expense, execute and deliver to the applicable Loan Party such documents as the Lead Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11 (and the Administrative Agent and the Collateral Agent may rely conclusively on a certificate of a Responsible Officer of the Lead Borrower to that effect provided to it by any Loan Party upon its reasonable request without further inquiry). Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent or the Collateral Agent. For the avoidance of doubt, no release of Collateral or Guarantors effected in the manner permitted by this Section 9.11 shall require the consent of any holder of obligations under Secured Hedge Agreements, any Treasury Services Obligations or Bilateral Letter of Credit Facility.

Section 9.12. *Other Agents; Arrangers and Managers.* None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “joint bookrunner,” “joint lead arranger,” “syndication agent” or “co-documentation agent” shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and

will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13. *Withholding Tax Indemnity.* To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the

Administrative Agent has not already been reimbursed by the Lead Borrower or any Guarantor pursuant to Section 3.01 and Section 3.04 and without limiting or expanding the obligation of the Lead Borrower or any Guarantor to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement, any other Loan Document or otherwise against any amount due the Administrative Agent under this Section 9.13. The agreements in this Section 9.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, the term “**Lender**” for purposes of this Section 9.13 shall include each L/C Issuer and Swing Line Lender.

Section 9.14. *Appointment of Supplemental Agents.*

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent or the Collateral Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent and the Collateral Agent are hereby authorized to appoint an additional individual or institution selected by the Administrative Agent or the Collateral Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Agent**” and collectively as “**Supplemental Agents**”).

(b) In the event that the Collateral Agent appoints a Supplemental Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Agent to the extent, and only to the extent, necessary to enable such Supplemental Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Agent shall run to and be enforceable by either the Collateral Agent or such Supplemental Agent, and (ii) the provisions of this Article 9 and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Agent and all references therein to the Collateral Agent shall be deemed to be references to the Collateral Agent and/or such Supplemental Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Agent so appointed by the Administrative Agent or the Collateral Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, such Loan Party shall execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent or the Collateral Agent. In case any Supplemental Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Agent.

Section 9.15. *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, the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent, any Lead Arranger or any of their respective Affiliates is 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).

Section 9.16. *Recovery of Erroneous Payments.* Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any L/C Issuer (the “**Lender Recipient Party**”), whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with

banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

## ARTICLE 10 MISCELLANEOUS

Section 10.01. *Amendments, Etc.* Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders, or by the Administrative Agent with the consent of the Required Lenders, and Holdings and the Borrowers (with an executed copy thereof promptly delivered to the Administrative Agent if not otherwise a party thereto) and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that any amendment or waiver contemplated in clauses (g) or (j) below, shall only require the consent of Holdings and the Borrowers and the Required Revolving Credit Lenders or the Required Facility Lenders under the applicable Facility, as applicable; *provided*, further, that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender without the written consent of each Lender holding such Commitment (it being understood that a waiver of any condition precedent or of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);
- (b) postpone any date scheduled for, or reduce or forgive the amount of, any payment of principal or interest under Sections 2.07 or 2.08 without the written consent of each Lender holding the applicable Obligation (it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it being understood that any change to the definition of “**Consolidated First Lien Net Leverage Ratio**,” “**Consolidated Secured Net Leverage Ratio**,” “**Consolidated Total Net Leverage Ratio**,” “**Consolidated Fixed Charge Coverage Ratio**” or, in each case, in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest);
- (c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or L/C Borrowing, or (subject to clause (iii) of the proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or change the timing of payments of such fees or other amounts) without the written consent of each Lender holding such Loan, L/C Borrowing or to whom such fee or other amount is owed (it being understood that any change to the definition of “**Consolidated First Lien Net Leverage Ratio**,” “**Consolidated Secured Net Leverage Ratio**,” “**Consolidated Total Net Leverage Ratio**,” “**Consolidated Fixed Charge Coverage Ratio**” or, in each case, in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest); *provided* that only the consent of the Required Lenders shall be necessary to amend the definition of “**Default Rate**” or to waive any obligation of the Borrowers to pay interest at the Default Rate;
- (d) change any provision of Section 8.04, 2.13 or this Section 10.01 or lower the percentage set forth in the definition of “**Required Revolving Credit Lenders**,” “**Required Lenders**,” “**Required Facility Lenders**,” “**Required Class Lenders**,” “**Required Financial Covenant Lenders**” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly and adversely affected thereby;
- (e) other than in connection with a transaction permitted under Sections 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;
- (f) other than in connection with a transaction permitted under Sections 7.04 or 7.05, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;



(g) (1) waive any condition set forth in Section 4.02 as to any Credit Extension under one or more Revolving Credit Facilities or (2) amend, waive or otherwise modify any term or provision which directly affects Lenders under one or more Revolving Credit Facilities or Term A Facilities, as applicable, and does not directly affect Lenders under any other Facility, in each case, without the written consent of

the Required Facility Lenders under such applicable Revolving Credit Facility or Facilities or the Required Facility Lenders under any Term A Facility or Facilities (and in the case of multiple Facilities which are affected, with respect to any such Facility, such consent shall be effected by the Required Facility Lenders of such Facility) (and with respect to any waiver, amendment or modification of Section 7.09 or the definition of “**Consolidated First Lien Net Leverage Ratio**” or the component definitions thereof (but only to the extent of any such component definition’s effect on the definition of “**Consolidated First Lien Net Leverage Ratio**” for the purposes of Section 7.09) without the consent of the Required Financial Covenant Lenders); *provided, however*, that the waivers described in this clause (g) shall not require the consent of any Lenders other than the Required Facility Lenders under such Facility or Facilities;

(h) amend, waive or otherwise modify the portion of the definition of “Interest Period” to automatically allow intervals in excess of six months, without the written consent of each Lender directly affected thereby;

(i) except as otherwise expressly permitted by this Agreement, (x) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation or (y) subordinate, or have the effect of subordinating, the Liens securing the Obligations to Liens securing any other Indebtedness or other obligation, in the case of clauses (x) and (y), without the prior written consent of each Lender; or

(j) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding under Section 2.14 (but not the conditions to implementing Incremental Term Loans or Incremental Revolving Credit Commitments pursuant to Section 2.14(d)(v) and Section 2.14(e)) with respect to Incremental Term Loans and Incremental Revolving Credit Commitments, under Section 2.15 with respect to Refinancing Term Loans and Other Revolving Credit Commitments and under Section 2.16 with respect to Extended Term Loans or Extended Revolving Credit Commitments and, in each case, the rate of interest applicable thereto) which directly affects Lenders of one or more Incremental Term Loans, Incremental Revolving Credit Commitments, Refinancing Term Loans, Other Revolving Credit Commitments, Extended Term Loans or Extended Revolving Credit Commitments and does not directly and adversely affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Incremental Term Loans, Incremental Revolving Credit Commitments, Refinancing Term Loans, Other Revolving Credit Commitments, Extended Term Loans or Extended Revolving Credit Commitments (and in the case of multiple Facilities which are directly affected, with respect to any such Facility, such consent shall be effected by the Required Facility Lenders of such Facility); *provided, however*, that the waivers described in this clause (j) shall not require the consent of any Lenders other than the Required Facility Lenders under such applicable Incremental Term Loans, Incremental Revolving Credit Commitments, Refinancing Term Loans, Other Revolving Credit Commitments, Extended Term Loans or Extended Revolving Credit Commitments, as the case may be; and

*provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of an L/C Issuer under this Agreement or any Letter of Credit Issuance Request 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 a Swing Line Lender in addition to the Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement; *provided, however*, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the Swing Line Lender and the Borrowers so long as the obligations of the Revolving Credit Lenders are not affected thereby; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent or the Collateral Agent, as applicable, in addition to the

Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent or the Collateral Agent, as applicable, under this Agreement or any other Loan Document; (iv) Section 10.07(i) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; and (v) the consent of Lenders holding more than 50% of any Class of Commitments or Loans shall be required with respect to any amendment that by its terms adversely affects the rights of such Class in respect of payments or Collateral hereunder in a manner different than such amendment affects other Classes. 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 materially and adversely affects any Defaulting Lender (if such Lender were not a Defaulting Lender) to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to the Closing Date Intercreditor Agreement, any Junior Lien Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the Other Debt Representatives, as expressly contemplated by the terms of the Closing Date Intercreditor Agreement, such Junior Lien Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable, pursuant to the terms thereof (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing); *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent and the Borrowers without the need to obtain the consent of any other Lender if such amendment is delivered in order (A) to correct or cure ambiguities, errors, omissions or defects, (B) to effect administrative changes of a technical or immaterial nature, (C) to fix incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document, (D) [reserved], (E) solely to add benefit to one or more existing Facilities, including but not limited to, increase in margin, interest rate floor, prepayment premium, call protection and reestablishment of or increase in amortization schedule, in order to cause any Incremental Facility to be fungible with any existing Facility and (F) to add any financial covenant or other terms for the benefit of all Lenders or any Class of Lenders pursuant to the conditions imposed on the incurrence of any Indebtedness set forth elsewhere in this Agreement, and in each case of clauses (A), (B) and (C), such amendment shall become effective without any further action or the consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof. The Collateral Documents and related documents in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented 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, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to correct or cure ambiguities, omissions, mistakes or defects or (iii) to cause such Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents and, in each case, such amendment shall become effective without any further action or the consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrowers and the Administrative Agent may enter into any Incremental Amendment in accordance with Section 2.14, any Refinancing Amendment in accordance with Section 2.15 and any Extension Amendment in accordance with Section 2.16 and such Incremental Amendments, Refinancing Amendments and Extension Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrowers and the Administrative Agent may enter into any amendment, waiver, consent or supplement to this Agreement and such other related changes to this Agreement as may be applicable to amend the definition of "Eurocurrency Rate" with the consents, if any, and in the manner, as set forth therein.

Section 10.02. *Notices and Other Communications; Facsimile Copies.*

(a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission

or electronic mail). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Lead Borrower (or any other Loan Party) or the Administrative Agent, the Collateral Agent, an L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02(a) or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrowers, the Administrative Agent, the Collateral Agent, each L/C Issuer and the Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(c)), when delivered; *provided* that notices and other communications to the Administrative Agent, the Collateral Agent, an L/C Issuer and the Swing Line Lender pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. Any notice 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.

(b) *Effectiveness of Facsimile Documents and Signatures.* Loan Documents may be transmitted and/or signed by facsimile or other electronic communication. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agents and the Lenders.

(c) *Reliance by Agents and Lenders.* The Administrative Agent, the Collateral Agent 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 the Borrowers 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 each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to the Administrative Agent or Collateral Agent may be recorded by the Administrative Agent or the Collateral Agent, and each of the parties hereto hereby consents to such recording.

(d) *Electronic Communications.* Notices and other communications to the Lenders and the L/C Issuers 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 L/C Issuer pursuant to Article 2 if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable

of receiving notices under such Article by such communication. The Administrative Agent, the Swing Line Lender, the L/C Issuers or any Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communication (including e-mail and Internet or intranet websites) 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, 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 of notification that such notice or communication is available and identifying the website address therefor.

Section 10.03. *No Waiver; Cumulative Remedies.* No failure by any Lender or the Administrative Agent or the Collateral 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.

Section 10.04. *Attorney Costs and Expenses.* The Lead Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Collateral Agent and the Lead Arrangers for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including all Attorney Costs, which shall be limited to one primary counsel (which shall be Cahill Gordon & Reindel LLP for any and all of the foregoing in connection with the Transactions and other matters, including primary syndication, to occur on or prior to or otherwise in connection with the Closing Date) and one local counsel as reasonably necessary in each relevant jurisdiction) and (b) from and after the Closing Date, to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers and each Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lead Arrangers (and one local counsel as reasonably necessary in each relevant jurisdiction) and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable and documented out-of-pocket expenses incurred by any Agent. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days of receipt by the Lead Borrower of an invoice relating thereto setting forth such expenses in reasonable detail including, if requested by the Lead Borrower and to the extent reasonably available, backup documentation supporting such reimbursement request; *provided* that with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Lead Borrower within three (3) Business Days of the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

Section 10.05. *Indemnification by the Lead Borrower.* The Lead Borrower shall indemnify and hold harmless each Agent-Related Person, each Lead Arranger, each Lender, each L/C Issuer and their respective Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of each of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities (including Environmental Liabilities), obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of



Credit or the use or proposed use of the proceeds therefrom including any refusal by an 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 or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”) in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; *provided* that, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Affiliates or their respective directors, officers, employees, partners, agents, advisors or other representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or of any of its Affiliates or their respective directors, officers, employees, partners, advisors or other representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an Agent or as a Lead Arranger under any Facility and other than any claims arising out of any act or omission of Holdings, the Borrowers, the Investors or any of its Affiliates). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Intralinks, Debtdomain, Roadshow Access (if applicable) or other similar information transmission systems in connection with this Agreement, nor, to the extent permissible under applicable Law, shall any Indemnitee, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party and for any out-of-pocket expenses in each case subject to the indemnification provisions of this Section 10.05); it being agreed that this sentence shall not limit the indemnification obligations of Holdings, the Borrowers or any Subsidiary. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund the amount of any payment to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05.

The agreements in this Section 10.05 shall survive the resignation or removal of the Administrative Agent or Collateral Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

Section 10.06. *Payments Set Aside.* To the extent that any payment by or on behalf of the Borrowers is made to any Agent or any Lender, or any Agent 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 such Agent 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, to the fullest extent possible under provisions of

applicable Law, 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 severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any 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 Effective Rate from time to time in effect, in the applicable currency of such recovery or payment.

Section 10.07. *Successors and Assigns.*

(a) 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 the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”) and (A) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, Section 10.07(l), (B) in the case of any Assignee that is Holdings, the Borrowers or any of their Subsidiaries, Section 2.05(a)(v) or Section 10.07(m), or (C) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, Section 10.07(p), (ii) by way of participation in accordance with the provisions of Section 10.07(f), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(j) or (iv) to an SPC in accordance with the provisions of Section 10.07(i) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding anything to the contrary, (x) no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender or a Disqualified Lender (and any failure of the Borrowers to respond to any request for consent of assignment shall not cause such Person to cease to constitute a Disqualified Lender), (ii) a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, (iii) with respect to the Revolving Credit Facility, a Person who is not a Professional Lender or (iv) to Holdings, the Borrowers or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(m)) and (y) no Lender may assign any of its rights or obligations under the Revolving Credit Facility or Revolving Credit Exposure hereunder without the consent of the Borrowers (not to be unreasonably withheld, delayed or conditioned) unless (i) such assignment is by a Revolving Credit Lender to another Revolving Credit Lender or an Affiliate of such assigning Revolving Credit Lender or (ii) an Event of Default under Section 8.01(a) or, solely with respect to Holdings or the Borrowers, Section 8.01(f) has occurred and is continuing; provided that the Borrowers shall be deemed to have consented to any assignment unless the Borrowers shall have objected thereto within ten (10) Business Days after they have received the written request therefor. 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 Section 10.07(f) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

If any Loans or Commitments are assigned or participated to a Disqualified Lender, then: (a) the Borrowers may (i) terminate any Commitment of such person and prepay any applicable outstanding Loans at a price equal to the lesser of (x) the current trading price of the Loans, (y) par and (z) the amount such person paid to acquire such Loans, in each case, without premium, penalty, prepayment fee or breakage, and/or (ii) require such person to assign its rights and obligations to one or more Eligible Assignees at the price indicated above (which assignment shall not be subject to any processing and recordation fee) and if such person does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such assignment within three (3) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such person, then such person shall be deemed to have executed and delivered such Assignment and Assumption without any action on its part, (b) no such person shall receive any information or reporting provided by the Borrowers, the Administrative Agent or any Lender, (c) for purposes of voting, any Loans or Commitments held by such person shall be deemed not to be outstanding, and such person shall have no voting or consent rights with respect to “Required Lender” or class votes or consents, (d) for purposes of any matter requiring the vote or consent of each Lender affected by any amendment or waiver, such person shall be deemed to have voted or consented to approve such amendment or waiver if a majority of the affected class (giving effect to clause (c) above) so approves, and (e) such person shall not be entitled to any expense reimbursement or indemnification rights under any Loan Documents (including Sections 10.04 and 10.05) and the Borrowers expressly reserve all rights against such person under contract, tort or any other theory and shall be treated in all other respects as a Defaulting Lender; it being understood and agreed that the foregoing provisions shall only apply to a Disqualified Lender and not to any assignee of such Disqualified Lender that becomes a Lender so long as such assignee is not a Disqualified Lender or an affiliate thereof.



The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (b) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

(b) (i) Subject to Section 10.07(a) and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(A) the Borrowers; *provided* that no consent of the Borrowers shall be required for (i) an assignment of all or any portion of the Term Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) an assignment related to Revolving Credit Commitments or Revolving Credit Exposure by a Revolving Credit Lender to another Revolving Credit Lender or an Affiliate of such Revolving Credit Lender, (iii) if an Event of Default under Section 8.01(a) or, solely with respect to Holdings or the Borrowers, Section 8.01(f) has occurred and is continuing, (iv) an assignment of all or a portion of the Commitments or Loans pursuant to Section 10.07(l), Section 10.07(m) or Section 10.07(p) or (v) any assignment made in connection with the primary syndication of the Facilities to Eligible Assignees approved by the Borrowers on or prior to the Closing Date;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund or (ii) all or any portion of the Loans pursuant to Section 10.07(l) or Section 10.07(m);

(C) each L/C Issuer at the time of such assignment; *provided* that no consent of the L/C Issuers shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure; and

(D) the Swing Line Lender; *provided* that no consent of the Swing Line Lender shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans of any Class, the amount of the Commitment or 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) shall not be less than an amount of \$1,000,000 (in the case of each Revolving Credit Loan or Revolving Credit Commitment), \$1,000,000 (in the case of a Term Loan), and shall be in increments of an amount of \$250,000 (in the case of each Revolving Credit Loan or Revolving Credit Commitment) or \$250,000 (in the case of Term Loans) in excess thereof (provided that simultaneous assignments to or from two or more Approved Funds shall be aggregated for purposes of determining compliance with this Section 10.07(b)(ii)(A)), unless the Borrowers and the Administrative Agent

otherwise consents; *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or if previously agreed with the Administrative Agent, manually), together with a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); *provided* that only one such fee shall be payable in the event of simultaneous assignments to or from two or more Approved Funds; and

(C) other than in the case of assignments pursuant to Section 10.07(m), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the Assignee shall designate one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Loan Parties and their Affiliates or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including federal and state securities laws) and all applicable tax forms required pursuant to Section 3.01(d).

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 Commitment or Loans assigned, except this paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

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 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 Pro Rata Share.

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.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Sections 10.07(d) and (e), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(m), the Eligible 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 (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note(s), the Borrowers (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) 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 10.07(f).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption, each Affiliated Lender Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrowers to the Administrative Agent pursuant to Section 10.07(m) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and the amounts due under Section 2.03, 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, notwithstanding notice to the contrary. The Register shall be available for



inspection by the Borrowers, any Agent and, with respect to such Lender's own interest only, any Lender, at any reasonable time and from time to time upon reasonable prior notice. The parties intend that all Loans will be at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code

and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Term Loans held by Affiliated Lenders. Upon request by the Administrative Agent, the Borrowers shall (i) promptly (and in any case, not less than five (5) Business Days (or shorter period as agreed to by the Administrative Agent) prior to the proposed effective date of any amendment, consent or waiver pursuant to Section 10.01) provide to the Administrative Agent, a complete list of all Affiliated Lenders holding Loans and/or Commitments at such time and (ii) not less than five (5) Business Days (or shorter period as agreed to by the Administrative Agent) prior to the proposed effective date of any amendment, consent or waiver pursuant to Section 10.01, provide to the Administrative Agent, a complete list of all Debt Fund Affiliates holding Loans and/or Commitments at such time.

(e) Upon its receipt of, and consent to, a duly completed Assignment and Assumption executed by an assigning Lender and an Assignee, an Administrative Questionnaire completed in respect of the assignee (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent, if required, and, if required, the Borrowers, the Swing Line Lender and each L/C Issuer to such assignment and any applicable tax forms required pursuant to Section 3.01(d), the Administrative Agent shall promptly (i) accept such Assignment and Assumption and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Any Lender may at any time sell participations to any Person, subject to clause (x) of the first *proviso* of Section 10.07(a) (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, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. 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 the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *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 second *proviso* to Section 10.01 that requires the affirmative vote of such Lender, in each case to the extent the Participant is directly and adversely affected thereby. Subject to Section 10.07(g), the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections and Sections 3.06 and 3.07) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). Each Lender that sells a participation agrees, at the Borrowers’ request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.07 with respect to any Participant. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.13 as though it were a Lender. Each Participant and each SPC will provide any applicable tax forms required pursuant to Section 3.01(d) solely to the participating Lender or Granting Lender. Each Lender that sells a participation or grants a Loan to an SPC shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant’s and each SPC’s interest in the Loans or other obligations under this Agreement (the “**Participant Register**”); *provided* that 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 Letters of Credit or its other obligations under any Loan

Document) except to the extent that (w) such disclosure is necessary in connection with an audit or other proceeding to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, upon request of the Borrowers, to confirm no Participant or SPC of Term Loans is a Disqualified Lender, a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person. The entries in the Participant Register shall be conclusive and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(g) A Participant shall not be entitled to receive any greater payment under Sections 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent the entitlement to a greater amount results from a change in Law after the sale of the participation to such Participant.

(h) [Reserved].

(i) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrowers (an “**SPC**”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections and Sections 3.06 and 3.07), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrowers under this Agreement except, in the case of Sections 3.01 or 3.04, to the extent the entitlement to a greater amount results from a change in Law after the grant to the SPC, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrowers and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any Rating Agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(j) Notwithstanding anything to the contrary contained herein, without the consent of the Borrowers or the Administrative Agent, any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it (and in the case of any Fund, such security interest may be created in favor of the trustee for holders of obligations owed or securities issued, by such Fund as security for such obligations or securities), including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender; *provided* that unless and until such pledgee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such pledgee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such pledgee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(k) Notwithstanding anything to the contrary contained herein, any L/C Issuer or Swing Line Lender may, upon thirty (30) days’ notice to the Borrowers and the Lenders, resign as an L/C Issuer or Swing Line Lender, respectively; *provided* that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer or Swing Line Lender shall have identified a successor L/C Issuer or Swing Line Lender reasonably acceptable to the Borrowers willing to accept its appointment as successor L/C Issuer or Swing Line Lender, as applicable, unless, at the option of the Borrowers, the Borrowers shall have appointed one or more L/C Issuers or Swing Line Lenders from among the Lenders willing to accept such appointment as a successor L/C Issuer or Swing Line Lender hereunder; *provided* that no failure by the Borrowers to appoint any such successor shall affect the resignation of the relevant L/C Issuer or the Swing Line Lender, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an 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 the Swing Line Lender 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, Eurocurrency Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

(l) (1) Any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) “Dutch Auctions” open to all Lenders of the applicable Class on a pro rata basis in accordance with analogous procedures of the type described in Section 2.05(a)(v) or (y) open-market purchases on a pro rata or non- pro rata basis and (2) any Affiliated Lender may, at any time, purchase all or a portion of the rights and obligations of a Defaulting Lender, in each case subject to the following limitations:

(i) the assigning Lender and the Affiliated Lender purchasing such Lender’s Loans and/or Commitments shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit L-1 hereto (an “**Affiliated Lender Assignment and Assumption**”);

(ii) Affiliated Lenders will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article 2;

(iii) the aggregate principal amount of Term Loans held at any one time by Affiliated Lenders shall not exceed 25% of the principal amount of any Class of Term Loans at such time outstanding (measured at the time of purchase) (such percentage, the “**Affiliated Lender Cap**”); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of each such Class of Term Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be *void ab initio*;

(iv) with respect to Section 10.07(1)(2), any non-Defaulting Lender of the same Class willing to repurchase any Loans/Commitments of the Defaulting Lenders from the Affiliated Lenders shall have the right to make such repurchase at *par plus* accrued and unpaid interest or at a lower price agreed to by such Defaulting Lender on a pro rata basis based on their share of the applicable Facility; and

(v) as a condition to each assignment pursuant to this clause (l), the Administrative Agent shall have been provided an Affiliated Lender Notice to this Agreement in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender shall waive any right to bring any action in connection with such Loans and/or Commitments against the Administrative Agent, in its capacity as such.

Each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit L-2.

(m) Any Lender may, so long as no Default has occurred and is continuing and, only to the extent purchased at a discount, no proceeds of Revolving Credit Loans are applied to fund the consideration for any such assignment, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings, the Borrowers or any of its Subsidiaries through (x) “Dutch Auctions” open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open-market purchase on a pro rata or non-pro rata basis (whether in individually negotiated transactions, transactions through intermediaries or in broadly disseminated offers); *provided* that in connection with assignments pursuant to clauses (x) and (y) above:

(i) if Holdings or any Subsidiary of the Borrowers is the assignee, upon such assignment, transfer or contribution, Holdings or such Subsidiary shall automatically be deemed to have contributed the principal amount of such Term Loans, *plus* all accrued and unpaid interest thereon, to the Borrowers;

(ii) if the assignee is any Borrower (including through contribution or transfers set forth in clause (i) above), (A) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to such Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (B) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by such Borrower and (C) such Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register; and

(iii) the assignee shall make the representations and warranties set forth in the Affiliated Lender Assignment and Assumption to such Lender.

(n) Notwithstanding anything in Section 10.01 or the definition of “**Required Lenders**,” “**Required Class Lenders**,” or “**Required Facility Lenders**” to the contrary, for purposes of determining whether the Required Lenders, the Required Class Lenders or the Required Facility Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, unless the action in question affects any Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders, or subject to Section 10.07(o), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and:

(A) all Commitments or Loans held by any Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders, the Required Class Lenders or the Required Facility Lenders have taken any actions; and

(B) all Commitments or Loans held by Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether all Lenders have taken any action unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on other Lenders.

(o) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that and each Affiliated Lender Assignment and Assumption shall provide a confirmation that, if a proceeding under any Debtor Relief Law shall be commenced by or against any Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Loans held by such Affiliated Lender in any manner in the Administrative Agent’s sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Loans held by it as the Administrative Agent directs; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a disproportionately adverse manner to such Affiliated Lender than the proposed treatment of similar Obligations held by Lenders that are not Affiliated Lenders.

(p) Notwithstanding anything in Section 10.01 or the definition of “**Required Lenders**” to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification,



waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any

action) with respect to or under any Loan Document, all Term Loans, Revolving Credit Commitments and Revolving Credit Loans held by Debt Fund Affiliates may not account for more than 49.9% (pro rata among such Debt Fund Affiliates) of the Term Loans, Revolving Credit Commitments and Revolving Credit Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

Section 10.08. *Confidentiality*. Each of the Agents, the Lead Arrangers and the Lenders agrees to maintain the confidentiality of the Information and not to disclose such information, except that Information may be disclosed (a) to its Affiliates and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel and other advisors (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 Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender or its Affiliates); *provided* that the Administrative Agent, such Lead Arranger or such Lender, as applicable, agrees that it will notify the Borrowers as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or examiner) unless such notification is prohibited by law, rule or regulation; (c) to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities or market data collectors, similar services providers to the lending industry and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Loan Documents; (d) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrowers as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or examiner) unless such notification is prohibited by law, rule or regulation; (e) to any other party to this Agreement or to the Investors; (f) subject to an agreement containing provisions at least as restrictive as those set forth in this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrowers), to any pledgee referred to in Section 10.07(j), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in any of its rights or obligations under this Agreement (provided that the disclosure of any such Information to any Lenders or Eligible Assignees or Participants shall be made subject to the acknowledgement and acceptance by such Lender, Eligible Assignee or Participant that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this Section 10.08 or as otherwise reasonably acceptable to the Borrowers, including, without limitation, as agreed in any Borrower Materials) in accordance with the standard processes of the Administrative Agent or customary market standards for dissemination of such type of Information); (g) with the written consent of the Borrowers; (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, the Lead Arrangers, any Lender, the L/C Issuer or any of their respective Affiliates on a non-confidential basis from a source other than a Loan Party or any Investor or their respective Affiliates (so long as such source is not known to the Administrative Agent, the Lead Arrangers, such Lender, such L/C Issuer or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (i) [reserved]; (j) to any Rating Agency when required by it (it being understood that, prior to any such disclosure, such Rating Agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender) or to the CUSIP Service Bureau or any similar organization; (k) in connection with establishing a "due diligence" defense or (l) to the extent such Information is independently developed by the Administrative Agent, the Lead Arrangers, such Lender, such L/C Issuer or any of their respective Affiliates; *provided* that no disclosure shall be made to any Disqualified Lender. In addition, the Agents and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of

this Section 10.08, “**Information**” means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates’ directors, managers, officers, employees, trustees, investment advisors or agents, relating to Holdings, the Lead Borrower or any of their Subsidiaries or its business, other than any such information that is publicly available to any Agent, any L/C Issuer or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrowers or any of their Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Section 10.09. *Setoff.* In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Collateral Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrowers, any such notice being waived by the Borrowers (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) 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) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Collateral Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or 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 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers, 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. Each Lender agrees promptly to notify the applicable Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have. No amounts set off from any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

Section 10.10. *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 any 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 an 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.

Section 10.11. *Counterparts.* This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier or other electronic transmission be confirmed by an original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier or other electronic transmission.

Section 10.12. *Integration; Termination.* This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.13. *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 each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any 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.

Section 10.14. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15. *GOVERNING LAW.*

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER OR OTHER ELECTRONIC TRANSMISSION) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE COLLATERAL DOCUMENTS AGAINST ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN ANY JURISDICTION IN WHICH COLLATERAL IS LOCATED.

Section 10.16. *WAIVER OF RIGHT TO TRIAL BY JURY.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS

SECTION 10.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.17. *Binding Effect.* This Agreement shall become effective when it shall have been executed by the Loan Parties, the Administrative Agent, the Collateral Agent, the L/C Issuers and the Administrative Agent shall have been notified by each Lender, the Swing Line Lender and the L/C Issuers that each Lender, the Swing Line Lender and the L/C Issuers have executed it and thereafter this Agreement shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Borrower shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18. *USA PATRIOT Act.* Each Lender that is subject to the USA PATRIOT Act 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, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA PATRIOT Act. This notice is given in accordance with the requirements of the USA PATRIOT Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19. *No Advisory or Fiduciary Responsibility.*

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrowers and their Affiliates, on the one hand, and the Agents, the Lead Arrangers and the Lenders, on the other hand, and each Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Agents, the Lead Arrangers and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for each Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Agents, the Lead Arrangers or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of each Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent or Lender has advised or is currently advising any Borrower or any of its Affiliates on other matters) and none of the Agents, the Lead Arrangers or the Lenders has any obligation to any Borrower or any of its respective Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Agents, the Lead Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Lead Borrower and its Affiliates, and none of the Agents, the Lead Arrangers or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Agents, the Lead Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate. Each Loan Party hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Agents, the Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty under applicable law relating to agency and fiduciary obligations.

(b) Each Loan Party acknowledges and agrees that each Lender, the Lead Arrangers and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrowers, Holdings, any Investor, any



Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, the Lead Arrangers or Affiliate thereof were not a Lender, the Lead Arrangers or an Affiliate thereof (or an agent or any other person with any similar role under the Facilities)

and without any duty to account therefor to any other Lender, the Lead Arrangers, Holdings, any Borrower, any Investor or any Affiliate of the foregoing. Each Lender, the Lead Arrangers and any Affiliate thereof may accept fees and other consideration from Holdings, any Borrower, any Investor or any Affiliate thereof for services in connection with this Agreement, the Facilities or otherwise without having to account for the same to any other Lender, the Lead Arrangers, Holdings, any Borrower, any Investor or any Affiliate of the foregoing. Some or all of the Lenders and the Lead Arrangers may have directly or indirectly acquired certain equity interests (including warrants) in Holdings, any Borrower, an Investor or an Affiliate thereof or may have directly or indirectly extended credit on a subordinated basis to Holdings, a Borrower, an Investor or an Affiliate thereof. Each party hereto, on its behalf and on behalf of its Affiliates, acknowledges and waives the potential conflict of interest resulting from any such Lender, the Lead Arrangers or an Affiliate thereof holding disproportionate interests in the extensions of credit under the Facilities or otherwise acting as arranger or agent thereunder and such Lender, the Lead Arrangers or any Affiliate thereof directly or indirectly holding equity interests in or subordinated debt issued by Holdings, a Borrower, an Investor or an Affiliate thereof.

Section 10.20. *Electronic Execution* . This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, each L/C Issuer, the Swing Line Lender, and each Lender (collectively, each a “**Lender Party**”) agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

The Administrative Agent and each of the Lender Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“**Electronic Copy**”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, any L/C Issuer nor the Swing Line Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Administrative Agent, any L/C Issuer and/or the Swing Line Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lender Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender Party without further verification and (b) upon the request of the Administrative Agent or any Lender Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “**Electronic Record**” and “**Electronic Signature**” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Neither the Administrative Agent, any L/C Issuer nor the Swing Line Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s, L/C Issuer’s or Swing Line Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, each L/C Issuer and the Swing Line Lender shall be entitled to rely on, and shall

incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Lender Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document and (ii) waives any claim against the Administrative Agent and each Lender Party for any liabilities arising solely from the Administrative Agent's and/or any Lender Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 10.21. *Effect of Certain Inaccuracies.* In the event that any financial statement or Compliance Certificate previously delivered pursuant to Section 6.02(a) was inaccurate or was restated (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, or such restatement would have led to the application of a higher Applicable Rate for any period (an “**Applicable Period**”) than the Applicable Rate applied for such Applicable Period, then (i) the Lead Borrower shall as soon as practicable deliver to the Administrative Agent a corrected or restated financial statement and a corrected or updated Compliance Certificate for such Applicable Period, (ii) the Applicable Rate shall be determined based on the updated Compliance Certificate for such Applicable Period, and (iii) the Lead Borrower shall within fifteen (15) days after the delivery of the corrected or restated financial statements and the updated Compliance Certificate pay to the Administrative Agent the accrued additional interest or fees owing as a result of such increased Applicable Rate for such Applicable Period. This Section 10.21 shall not limit the rights of the Administrative Agent or the Lenders with respect to Sections 2.08(b) and 8.01; *provided* that any underpayment due to change in Applicable Rate shall not in itself constitute a Default or Event of Default under Section 8.01 so long as such additional interest or fees are paid within the 15-day period set forth above.

Section 10.22. *Judgment Currency.* If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrowers hereunder in the currency expressed to be payable herein (the “**specified currency**”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures any Lender could purchase the specified currency with such other currency at such Lender's New York office on the Business Day preceding that on which final judgment is given. The obligations of the Borrowers in respect of any sum due to any Lender hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender of any sum adjudged to be so due in such other currency such Lender may in accordance with normal banking procedures purchase the specified currency with such other currency; if the amount of the specified currency so purchased is less than the sum originally due to such Lender in the specified currency, the Borrowers agree, to the fullest extent that they may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss, and if the amount of the specified currency so purchased exceeds the sum originally due to such Lender in the specified currency, such Lender agrees to remit such excess to the Borrowers.

Section 10.23. *Acknowledgement and Consent to Bail-In of Affected 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 Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto to any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of

ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.24. *Cashless Rollovers.* Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Loans with Incremental Facilities, Facilities in connection with any Refinancing Series, Extended Term Loans, Extended Revolving Credit Loans or loans incurred under a new credit facility, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a “cashless roll” by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Loan Document that such payment be made “in Dollars,” “in immediately available funds,” “in cash” or any other similar requirement.

Section 10.25. *Dutch Borrower Representations.* Dutch Borrower Representation. If the Dutch Borrower is represented by an attorney in connection with the signing and/or execution of this Agreement or any other agreement, deed or document referred to in or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties to this Agreement that the existence and extent of the attorney’s authority and the effects of the attorney’s exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.

Section 10.26. *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).

(a) 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.

(b) As used in this Section 10.26, the following terms have the following meanings:

“**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.

“**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).

“**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.

“**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).

## ARTICLE 11 GUARANTY

Section 11.01. *The Guaranty.* Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not merely as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrowers, and all other Obligations (other than with respect to any Guarantor, Excluded Swap Obligations of such Guarantor) from time to time owing to the Secured Parties by the Lead Borrower or any of its Subsidiaries under any Loan Document or any Secured Hedge Agreement or any Treasury Services Obligations, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrowers or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02. *Obligations Unconditional.* The obligations of the Guarantors under Section 11.01 shall constitute a guarantee of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrowers under this Agreement, the Secured Hedge Agreements, Treasury Services Obligations, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of



the Guaranteed Obligations or except as permitted pursuant to Section 11.10 any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, an L/C Issuer or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.10.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrowers under this Agreement, the Secured Hedge Agreements, Treasury Services Obligations or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guaranty or acceptance of this Guaranty, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between the Borrowers and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. This Guaranty shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrowers or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03. *Reinstatement.* The obligations of the Guarantors under this Article 11 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrowers or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in insolvency, bankruptcy or reorganization or otherwise.

Section 11.04. *Subrogation; Subordination.* Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than (x) obligations under Secured Hedge Agreements, Treasury Services Obligations and Bilateral Letter of Credit Facilities not yet due and payable and (y) contingent indemnification obligations not yet accrued and payable) and the expiration or termination of the Commitments of the Lenders under this Agreement, it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrowers or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Sections 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05. *Remedies.* The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrowers under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrowers and that, in the event

of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrowers) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06. *Instrument for the Payment of Money.* Each Guarantor hereby acknowledges that the guarantee in this Article 11 constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07. *Continuing Guaranty.* The guarantee in this Article 11 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08. *General Limitation on Guarantee Obligations.* In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.11) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09. *Information.* Each Guarantor assumes all responsibility for being and keeping itself informed of the Lead Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Guaranty, and agrees that none of any Agent, any L/C Issuer or any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

Section 11.10. *Release of Guarantors.* If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred as permitted under this Agreement, to a person or persons, none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary, such Subsidiary Guarantor shall, upon the consummation of such sale or transfer or upon becoming an Excluded Subsidiary, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Lead Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent and the Collateral Agent shall, at such Subsidiary Guarantor's expense, take such actions as are necessary to effect each release described in this Section 11.10 in accordance with the relevant provisions of the Collateral Documents; *provided* that no such release shall occur if such Guarantor continues to be a guarantor in respect of the Senior Secured Notes or any Junior Financing with a principal amount in excess of the Threshold Amount.

When all Commitments hereunder have terminated, and all Loans or other Obligations (other than obligations under Treasury Services Agreements, Secured Hedge Agreements or Bilateral Letter of Credit Facilities) hereunder which are accrued and payable have been paid or satisfied, and no Letter of Credit remains outstanding (except any Letter of Credit the Outstanding Amount of which the Obligations related thereto has been Cash Collateralized or for which a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer has been put in place), this Agreement, the other Loan Documents and the guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement or the other Loan Documents. The Collateral Agent shall, at each Guarantor's expense, take such actions as are necessary to release any Collateral owned by such Guarantor in accordance with the relevant provisions of the Collateral Documents.

Section 11.11. *Right of Contribution.* Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders, and each Subsidiary Guarantor shall remain

liable to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.12. *Cross-Guaranty*. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Guarantor as may be needed by such Specified Guarantor from time to time to honor all of its obligations under its Guaranty and the other Loan Documents in respect of any Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.12 for 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 Section 11.12 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 11.12 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full and all Commitments have been terminated. Each Qualified ECP Guarantor intends that this Section 11.12 constitute, and this Section 11.12 shall be deemed to constitute, an agreement for the benefit of each Specified Guarantor for all purposes of the Commodity Exchange Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officer as of the day and year first above written.

CONDUENT INCORPORATED,  
as Holdings

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

CONDUENT BUSINESS SERVICES, LLC,  
as a Borrower

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

CONDUENT STATE & LOCAL SOLUTIONS, INC.,  
as a Borrower

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

AFFILIATED COMPUTER SERVICES INTERNATIONAL B.V.,  
as a Borrower

By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

*[Signature Page to Credit Agreement]*

CONDUENT BUSINESS PROCESS OPTIMIZATION SERVICES, INC. CONDUENT  
CARE AND QUALITY SOLUTIONS, INC.  
CONDUENT HEALTHCARE KNOWLEDGE SOLUTIONS, INC. CONDUENT  
HEALTHY COMMUNITIES CORPORATION CONDUENT IMAGE  
SOLUTIONS, INC.  
CONDUENT LEARNING SERVICES, INC. CONDUENT  
TRANSPORT SOLUTIONS, INC.  
CONDUENT WIRELESS DATA SERVICES NORTH AMERICAN, INC. CONDUENT  
EDI SOLUTIONS, INC.  
CONDUENT MIDDLE EAST, INC.  
CONDUENT MORTGAGE SERVICES, INC. CONDUENT  
PAYMENT INTEGRITY SOLUTIONS, INC.  
CONDUENT PUBLIC HEALTH SOLUTIONS, INC. CONDUENT  
TRADEONE MARKETING, INC.  
CONDUENT WORKERS COMPENSATION HOLDINGS, INC. CONDUENT  
CARE MANAGEMENT, LLC  
CONDUENT CARE SOLUTIONS, LLC  
CONDUENT CASUALTY CLAIMS SOLUTIONS, LLC  
CONDUENT EDUCATION SERVICES, LLC CONDUENT  
COMMERCIAL SOLUTIONS, LLC CONDUENT CREDIT  
BALANCE SOLUTIONS, LLC CONDUENT HEALTH  
ASSESSMENTS, LLC CONDUENT HERITAGE, LLC  
CONDUENT HR SERVICES, LLC  
CONDUENT PATIENT ACCESS SOLUTIONS, LLC CONDUENT LEGAL  
& COMPLIANCE SOLUTIONS, LLC., CONDUENT HUMAN SERVICES,  
LLC  
CONDUENT STATE HEALTHCARE, LLC  
CONDUENT PARKINDY, LLC

each, as Guarantor

By: /s/ KEVIN CIAGLO

Name: Kevin Ciaglo

Title: Assistant Secretary

CONDUENT FEDERAL SOLUTIONS, LLC CONDUENT  
LENDING, INC.  
CONDUENT HEALTH ADMINISTRATION, INC.,

each. as Guarantor



By: /s/ KEVIN CIAGLO  
Name: Kevin Ciaglo  
Title: Assistant Secretary

*[Signature Page to Credit Agreement]*

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BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ GAVIN SHAK Name: Gavin Shak  
Title: Assistant Vice President

*[Signature Page to Credit Agreement]*

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BANK OF AMERICA, N.A., as Collateral Agent, Swing  
Line Lender, L/C Issuer, a Term Lender and a Revolving  
Credit Lender

By: /s/ DAVID J BARDWIL Name: David J.  
Bardwil  
Title: Senior Vice President

*[Signature Page to Credit Agreement]*

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CITIBANK, N.A.,

as L/C Issuer, Revolving Credit Lender and Term A  
Lender

By: /s/ JAVIER ESCOBAR Name: Javier Escobar  
Title: Vice President

*[Signature Page to Credit Agreement]*



CAPITAL ONE, NATIONAL ASSOCIATION,  
as L/C Issuer, Revolving Credit Lender and Term A Lender

By: /s/ PAUL ISAAC

Name: Paul Isaac

Title: Duly Authorized Signatory



[Signature Page to Credit Agreement]

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CITIZENS BANK, N.A.  
as L/C Issuer, Revolving Credit Lender and Term A Lender

By: /s/ ANGELA REILLY  
Angela Reilly  
Senior Vice President

*[Signature Page to Credit Agreement]*

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FIFTH THIRD BANK, NATIONAL ASSOCIATION,  
as L/C Issuer, Revolving Credit Lender and Term A Lenders

By: /s/ SUZANNE RODE

Name: Suzanne Rode Title:  
Managing Director

*[Signature Page to Credit Agreement]*

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HSBC BANK USA, NATIONAL  
ASSOCIATION  
as Revolving Credit Lender and Term A Lender

By: /s/ KYLE O'REILLY

Name: Kyle O'Reilly

Title: VP #23203

*[Signature Page to Credit Agreement]*



HSBC BANK USA, NATIONAL  
ASSOCIATION  
as Revolving Credit Lender and Term A Lender

By:     /s/ KYLE O'REILLY    

Name: Kyle O'Reilly

Title: VP #23203

*[Signature Page to Credit Agreement]*

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KeyBank National Association,  
as L/C Issuer, Revolving Credit Lender and Term A  
Lender

By:     /s/ ANDREW SENNETT

Name: Andrew Sennett

Title: Vice President

*[Signature Page to Credit Agreement]*

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Mizuho Bank, Ltd.,  
as L/C Issuer, Revolving Credit Lender and Term A  
Lender

By:           /s/ TRACY RAHN

Name: Tracy Rahn

Title: Executive Director

*[Signature Page to Credit Agreement]*

MUFG BANK, LTD.

as L/C Issuer, Revolving Credit Lender and Term A Lender

By: /s/ JOSEPH SIRI

Name: Joseph Siri

Title: Vice President

*[Signature Page to Credit Agreement]*

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SANTANDER BANK,  
N.A.,  
as L/C Issuer,  
Revolving Credit  
Lender and Term A  
Lender

By: /s/ JOHN T.  
RUOTOLO

Name: John T.  
Ruotolo

Title: Senior  
Vice President

By: /s/ JENNIFER  
BAYDIAN

Name: Jennifer Baydian

Title: Senior  
Vice President

*[Signature Page to Credit Agreement]*

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TRUIST BANK,  
as L/C Issuer, Revolving Credit Lender and Term A  
Lender

By:     /s/ DAVID MILLER      
Name: David Miller  
Title: Director

*[Signature Page to Credit Agreement]*



U.S. Bank National  
Association,  
as L/C Issuer,  
Revolving Credit  
Lender and Term A  
Lender

By:     /s/ JENNIFER  
HWANG

Name: Jennifer  
Hwang

Title: Senior  
Vice President

*[Signature Page to Credit Agreement]*

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WELLS  
FARGO  
BANK,  
NATIONAL  
ASSOCIATION  
as L/C Issuer, Revolving  
Credit Lender and Term A  
Lender

By: /s/ KAREN H.  
McCLAIN  
Name: Karen H. McClain  
Title: Managing Director

By: /s/ KAREN H. McCLAIN  
Name: Karen H. McClain  
Title: Managing Director

*[Signature Page to Credit Agreement]*

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People's United Bank, N.A.  
Revolving Credit Lender and Term A Lender

By:     /s/ JAMES RILEY    

Name: James Riley  
Title: Senior Vice President

*[Signature Page to Credit Agreement]*

THE BANK OF NEW YORK MELLON,

as Term A Lender

By: /s/ THOMAS J. TARASOVICH, JR

Name: Thomas J. Tarasovich, Jr.

Title: Vice President



*[Signature Page to Credit Agreement]*

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THE BANK OF NEW YORK MELLON,

as Revolving Credit Lender

By: /s/ THOMAS J. TARASOVICH, JR

Name: Thomas J. Tarasovich, Jr.

Title: Vice President

*[Signature Page to Credit Agreement]*

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The Governor and Company of the Bank of Ireland, as  
Revolving Credit Lender and Term A Lender

By:     /s/ CHRISTOPHER DICK

Name: Christopher Dick Title:

Deputy Manager

By:     /s/ KEITH HUGHES

Name: Keith Hughes Title:

Director

*[Signature Page to Credit Agreement]*

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COMERICA BANK  
as Revolving Credit Lender and  
Term A Lender

By:     /s/ ROBERT WILSON

Name: Robert Wilson

Title: Senior Vice

President

*[Signature Page to Credit Agreement]*

**CEO CERTIFICATIONS**

I, Clifford Skelton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Conduent Incorporated;
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 4, 2021

/s/ CLIFFORD SKELTON

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**Clifford Skelton**

**Principal Executive Officer**



**CFO CERTIFICATIONS**

I, Stephen Wood, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Conduent Incorporated;
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 4, 2021

/s/ STEPHEN WOOD

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**Stephen Wood**

**Principal Financial Officer**

**CERTIFICATION OF CEO AND CFO PURSUANT TO 18 U.S.C. § 1350,  
AS ADOPTED PURSUANT TO § 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Form 10-Q of Conduent Incorporated, a New York corporation (the “Company”), for the quarter ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Clifford Skelton, Chief Executive Officer of the Company, and Stephen Wood, Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to the best of his/her knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) 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/ CLIFFORD SKELTON

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**Clifford Skelton**

**Chief Executive Officer**

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**November 4, 2021**

/s/ STEPHEN WOOD

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**Stephen Wood**

**Chief Financial Officer**

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**November 4, 2021**

This certification accompanies this Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of § 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by § 906 has been provided to Conduent Incorporated and will be retained by Conduent Incorporated and furnished to the Securities and Exchange Commission or its staff upon request.

Cover Page - \$ / shares

9 Months Ended  
Sep. 30, 2021

Oct. 31, 2021

[Cover \[Abstract\]](#)

<a href="#">Document Type</a>	10-Q	
<a href="#">Document Quarterly Report</a>	true	
<a href="#">Document Period End Date</a>	Sep. 30, 2021	
<a href="#">Document Transition Report</a>	false	
<a href="#">Entity File Number</a>	001-37817	
<a href="#">Entity Registrant Name</a>	CONDUENT INC	
<a href="#">Entity Incorporation, State or Country Code</a>	NY	
<a href="#">Entity Tax Identification Number</a>	81-2983623	
<a href="#">Entity Address, Address Line One</a>	100 Campus Drive,	
<a href="#">Entity Address, Address Line Two</a>	Suite 200,	
<a href="#">Entity Address, City or Town</a>	Florham Park,	
<a href="#">Entity Address, State or Province</a>	NJ	
<a href="#">Entity Address, Postal Zip Code</a>	07932	
<a href="#">City Area Code</a>	844	
<a href="#">Local Phone Number</a>	663-2638	
<a href="#">Title of 12(b) Security</a>	Common Stock, \$0.01 par value	
<a href="#">Trading Symbol</a>	CNDT	
<a href="#">Security Exchange Name</a>	NASDAQ	
<a href="#">Entity Current Reporting Status</a>	Yes	
<a href="#">Entity Interactive Data Current</a>	Yes	
<a href="#">Entity Filer Category</a>	Accelerated Filer	
<a href="#">Entity Small Business</a>	false	
<a href="#">Entity Emerging Growth Company</a>	false	
<a href="#">Entity Shell Company</a>	false	
<a href="#">Common Stock, Par or Stated Value Per Share</a>	\$ 0.01	
<a href="#">Entity Common Stock, Shares Outstanding (in shares)</a>		212,793,998
<a href="#">Entity Central Index Key</a>	0001677703	
<a href="#">Current Fiscal Year End Date</a>	--12-31	
<a href="#">Document Fiscal Year Focus</a>	2021	
<a href="#">Document Fiscal Period Focus</a>	Q3	
<a href="#">Amendment Flag</a>	false	

Condensed Consolidated Statements of Income - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
<b>Revenue</b>				
<u>Revenue</u>	\$ 1,038	\$ 1,041	\$ 3,092	\$ 3,108
<b>Operating Costs and Expenses</b>				
<u>Cost of services (excluding depreciation and amortization)</u>	776	779	2,335	2,406
<u>Selling, general and administrative (excluding depreciation and amortization)</u>	131	122	382	349
<u>Research and development (excluding depreciation and amortization)</u>	2	0	3	1
<u>Depreciation and amortization</u>	84	112	265	344
<u>Restructuring and related costs</u>	10	20	31	56
<u>Interest expense</u>	12	14	38	46
<u>(Gain) loss on divestitures and transaction costs</u>	0	8	1	14
<u>Litigation costs</u>	0	0	2	20
<u>Loss on extinguishment of debt</u>	0	0	2	0
<u>Other (income) expenses, net</u>	4	(1)	4	0
<u>Total Operating Costs and Expenses</u>	1,019	1,054	3,063	3,236
<u>Income (Loss) Before Income Taxes</u>	19	(13)	29	(128)
<u>Income tax expense (benefit)</u>	8	(6)	17	(21)
<u>Net Income (Loss)</u>	\$ 11	\$ (7)	\$ 12	\$ (107)
<b>Net Earnings (Loss) per Share:</b>				
<u>Basic (in USD per share)</u>	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
<u>Diluted (in USD per share)</u>	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)

Condensed Consolidated Statements of Comprehensive Income (Loss) - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
<b><u>Statement of Comprehensive Income [Abstract]</u></b>				
<u>Net Income (Loss)</u>	\$ 11	\$ (7)	\$ 12	\$ (107)
<b><u>Other Comprehensive Income (Loss), Net:</u></b>				
<u>Currency translation adjustments, net</u>	[1](16)	11	(23)	(15)
<u>Unrecognized gains (losses), net</u>	[1]0	1	(1)	0
<u>Changes in benefit plans, net</u>	[1]0	0	(1)	1
<u>Other Comprehensive Income (Loss), Net</u>	[1](16)	12	(25)	(14)
<u>Comprehensive Income (Loss), Net</u>	\$ (5)	\$ 5	\$ (13)	\$ (121)

[1] All amounts are net of tax. Tax effects were immaterial.

**Condensed Consolidated  
Balance Sheets - USD (\$)  
shares in Thousands, \$ in  
Millions**

**Sep. 30, 2021 Dec. 31, 2020**

**Assets, Current [Abstract]**

<u>Cash and cash equivalents</u>	\$ 394	\$ 450
<u>Accounts receivable, net</u>	701	670
<u>Contract assets</u>	159	151
<u>Other current assets</u>	257	306
<u>Total current assets</u>	1,511	1,577
<u>Land, buildings and equipment, net</u>	273	305
<u>Operating lease right-of-use assets</u>	243	246
<u>Intangible assets, net</u>	84	187
<u>Goodwill</u>	1,506	1,528
<u>Other long-term assets</u>	475	413
<u>Total Assets</u>	4,092	4,256

**Liabilities, Current [Abstract]**

<u>Current portion of long-term debt</u>	21	90
<u>Accounts payable</u>	169	182
<u>Accrued compensation and benefits costs</u>	252	237
<u>Unearned income</u>	111	133
<u>Other current liabilities</u>	434	450
<u>Total current liabilities</u>	987	1,092
<u>Long-term debt</u>	1,384	1,420
<u>Deferred taxes</u>	87	97
<u>Operating lease liabilities</u>	195	207
<u>Other long-term liabilities</u>	114	108
<u>Total Liabilities</u>	2,767	2,924
<u>Contingencies</u>		
<u>Series A convertible preferred stock</u>	142	142
<u>Common stock</u>	2	2
<u>Additional paid-in capital</u>	3,912	3,899
<u>Retained earnings (deficit)</u>	(2,308)	(2,313)
<u>Accumulated other comprehensive loss</u>	(423)	(398)
<u>Total Equity</u>	1,183	1,190
<u>Total Liabilities and Equity</u>	\$ 4,092	\$ 4,256
<u>Shares of common stock outstanding (in shares)</u>	212,672	212,074
<u>Shares of series A convertible preferred stock outstanding (in shares)</u>	120	120

**Condensed Consolidated  
Statements of Cash Flows -  
USD (\$)  
\$ in Millions**

**9 Months Ended  
Sep. 30,  
2021      Sep.  
30,  
2020**

**Cash Flows from Operating Activities:**

<u>Net income (loss)</u>	\$ 12	\$ (107)
--------------------------	-------	----------

**Adjustments required to reconcile net income (loss) to cash flows from operating activities:**

<u>Depreciation and amortization</u>	265	344
<u>Contract inducement amortization</u>	1	2
<u>Deferred income taxes</u>	(7)	(38)
<u>(Gain) loss from investments</u>	5	(3)
<u>Amortization of debt financing costs</u>	5	5
<u>Loss on extinguishment of debt</u>	2	0
<u>Loss on divestitures and sales of fixed assets, net</u>	1	5
<u>Stock-based compensation</u>	14	14
<u>Allowance for doubtful accounts</u>	(1)	1

**Changes in operating assets and liabilities:**

<u>Accounts receivable</u>	(34)	(36)
<u>Other current and long-term assets</u>	(59)	(51)
<u>Accounts payable and accrued compensation and benefits costs</u>	5	(5)
<u>Restructuring liabilities</u>	0	3
<u>Other current and long-term liabilities</u>	(57)	(152)
<u>Net change in income tax assets and liabilities</u>	6	7
<u>Net Cash Provided by (Used in) Operating Activities</u>	158	(11)

**Cash Flows from Investing Activities:**

<u>Cost of additions to land, buildings and equipment</u>	(52)	(48)
<u>Cost of additions to internal use software</u>	(49)	(47)
<u>Proceeds from divestitures</u>	4	3
<u>Net Cash Provided by (Used in) Investing Activities</u>	(97)	(92)

**Cash Flows from Financing Activities:**

<u>Proceeds from revolving credit facility and other loans</u>	0	152
<u>Payments on revolving credit facility</u>	(102)	(41)
<u>Payment of contingent consideration related to acquisition</u>	0	(4)
<u>Premium on debt redemption</u>	(2)	0
<u>Taxes paid for settlement of stock-based compensation</u>	(1)	(3)
<u>Dividends paid on preferred stock</u>	(7)	(5)
<u>Net cash provided by (used in) financing activities</u>	(112)	99
<u>Effect of exchange rate changes on cash, cash equivalents and restricted cash</u>	(7)	(5)
<u>Increase (decrease) in cash, cash equivalents and restricted cash</u>	(58)	(9)
<u>Cash, Cash Equivalents and Restricted Cash at Beginning of Period</u>	458	505
<u>Cash, Cash Equivalents and restricted Cash at End of period</u>	[1] \$ 400	\$ 496



[1] Includes \$6 million and \$8 million of restricted cash as of September 30, 2021 and 2020, respectively, that were included in Other current assets on their respective Condensed Consolidated Balance Sheets.

**Condensed Consolidated  
Statements of Cash Flows  
(Parenthetical) - USD (\$)  
\$ in Millions**

**Sep. 30, 2021 Sep. 30, 2020**

**Restricted Cash [Abstract]**

<b><u>Restricted Cash</u></b>	<b>\$ 6</b>	<b>\$ 8</b>
-------------------------------	-------------	-------------

<b>Condensed Consolidated Statements of Shareholders' Equity - USD (\$) \$ in Millions</b>	<b>Total</b>	<b>Common Stock</b>	<b>Additional Paid-in Capital</b>	<b>Retained Earnings (Deficit)</b>	<b>AOCL [1]</b>	<b>Shareholders' Equity</b>
<u>Balance at period start at Dec. 31, 2019</u>		\$ 2	\$ 3,890	\$ (2,185)	\$ (407)	\$ 1,300
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Dividends, Preferred Stock</u>				(7)		(7)
<u>Stock incentive plans, net</u>			11			11
<u>Net income (loss)</u>	\$			(107)	0	(107)
	(107)					
<u>Other comprehensive income (loss), net</u>	(14)	[2]		0	(14)	(14)
<u>Comprehensive Income (Loss), Net</u>	(121)			(107)	(14)	(121)
<u>Balance at period end at Sep. 30, 2020</u>		2	3,901	(2,299)	(421)	1,183
<u>Balance at period start at Jun. 30, 2020</u>		2	3,896	(2,290)	(433)	1,175
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Dividends, Preferred Stock</u>				(2)		(2)
<u>Stock incentive plans, net</u>			5			5
<u>Net income (loss)</u>	(7)			(7)		(7)
<u>Other comprehensive income (loss), net</u>	12	[2]			12	12
<u>Comprehensive Income (Loss), Net</u>	5			(7)	12	5
<u>Balance at period end at Sep. 30, 2020</u>		2	3,901	(2,299)	(421)	1,183
<u>Balance at period start at Dec. 31, 2020</u>	1,190	2	3,899	(2,313)	(398)	1,190
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Dividends, Preferred Stock</u>				(7)		(7)
<u>Stock incentive plans, net</u>			13			13
<u>Net income (loss)</u>	12			12		12
<u>Other comprehensive income (loss), net</u>	(25)	[2]			(25)	(25)
<u>Comprehensive Income (Loss), Net</u>	(13)			12	(25)	(13)
<u>Balance at period end at Sep. 30, 2021</u>	1,183	2	3,912	(2,308)	(423)	1,183

<u>Balance at period start at Jun. 30, 2021</u>		2	3,907	(2,317)	(407)	1,185
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Dividends, Preferred Stock</u>				(2)		(2)
<u>Stock incentive plans, net</u>			5			5
<u>Net income (loss)</u>	11			11		11
<u>Other comprehensive income (loss), net</u>	(16)	[2]			(16)	(16)
<u>Comprehensive Income (Loss), Net</u>	(5)			11	(16)	(5)
<u>Balance at period end at Sep. 30, 2021</u>	\$	\$ 2	\$ 3,912	\$ (2,308)	\$ (423)	\$ 1,183

[1] AOCL - Accumulated other comprehensive loss. Refer to Note 10 – Accumulated Other Comprehensive Loss for the components of AOCL.

[2] All amounts are net of tax. Tax effects were immaterial.

**Condensed Consolidated  
Statements of Shareholders'  
Equity (Parenthetical) - \$ /  
shares**

**3 Months Ended**                      **9 Months Ended**  
**Sep. 30, 2021** **Sep. 30, 2020** **Sep. 30, 2021** **Sep. 30, 2020**

**Statement of Stockholders' Equity [Abstract]**

**Preferred Stock, Dividend Rate (in dollars per share)** \$ 20                      \$ 20                      [1]                      \$ 60                      \$ 60                      [1]

[1] The preferred dividend for the third quarter of 2020 was accrued but unpaid as of September 30, 2020.

## Basis of Presentation

9 Months Ended  
Sep. 30, 2021

### [Organization, Consolidation and Presentation of Financial Statements](#)

#### [\[Abstract\]](#)

#### [Basis of Presentation](#)

#### Basis of Presentation

References herein to “we,” “us,” “our,” the “Company” and “Conduent” refer to Conduent Incorporated and its consolidated subsidiaries unless the context suggests otherwise.

#### Description of Business

As one of the largest business process services companies in the world, Conduent delivers mission-critical services and solutions on behalf of businesses and governments – creating exceptional outcomes for its clients and the millions of people who count on them. Through people, process, expertise in transaction-intensive processing and technology such as analytics and automation, Conduent’s services and solutions create value by improving efficiencies, reducing costs and enabling revenue growth. A majority of Fortune 100 companies and over 500 government entities depend on Conduent every day to manage their business processes and essential interactions with their end-users. The Company’s portfolio includes industry-focused solutions in attractive growth markets such as healthcare and transportation, as well as solutions that serve multiple industries such as transaction processing, customer care, human resource solutions and payment services.

#### Basis of Presentation

The unaudited interim Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) on a basis consistent with reporting interim financial information in accordance with instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. The year-end Condensed Consolidated Balance Sheet was derived from the audited Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. Certain reclassifications have been made to prior year information to conform to current year presentation. Intercompany balances and transactions have been eliminated. In the opinion of management, all adjustments necessary for a fair statement of the financial position, results of operations and cash flows have been made. These adjustments consist of normal recurring items. The interim results of operations are not necessarily indicative of the results of the full year. These financial statements should be read in conjunction with the Company’s Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020.

#### Use of Estimates

Preparation of financial statements in conformity with U.S. GAAP requires the Company to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. Actual results could differ materially from these estimates. On an ongoing basis, the Company evaluates its estimates, including those related to fair values of financial instruments, goodwill and intangible assets, income taxes and contingent liabilities, among others. The Company bases its estimates on assumptions, both historical and forward looking, that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

As of September 30, 2021, the impact of the COVID-19 pandemic, the mitigating impact of the rollout of a vaccine for it and fluctuating cases of new variants of the virus continue to unfold. As a result, many of the Company's estimates and assumptions continue to require increased judgment and carry a higher degree of variability and volatility. As events continue to evolve and additional information becomes available, the Company's estimates may change materially in the future.

## Recent Accounting Pronouncements

9 Months Ended  
Sep. 30, 2021

### [Accounting Policies](#)

#### [\[Abstract\]](#)

### [Recent Accounting Pronouncements](#)

#### Recent Accounting Pronouncements

The Company's significant accounting policies are described in Note 1–Basis of Presentation and Summary of Significant Accounting Policies in the Company's Annual Report on Form 10-K for the year ended December 31, 2020. Summarized below are the applicable accounting pronouncements adopted or to be adopted subsequent to December 31, 2020.

#### New Accounting Standards Adopted

**Income Taxes:** In December 2019, the Financial Accounting Standards Board (FASB) issued final guidance that simplified the accounting for income taxes by eliminating some exceptions to the general approach in Accounting Standards Codification (ASC) 740, Income Taxes. This final guidance was effective for fiscal years beginning January 1, 2021. The Company adopted the final income taxes guidance as of January 1, 2021. The adoption did not have any material impact on the Company's Condensed Consolidated Financial Statements.

#### New Accounting Standards To Be Adopted

**Reference Rate Reform:** In March 2020, the FASB issued updated guidance relating to the accounting for the discontinuation of the London Inter-bank Offered Rate (LIBOR), referred to as reference rate reform. This guidance provides optional practical expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. This guidance is applicable to contract modifications that replace a reference LIBOR rate affected by reference rate reform. The amendments may be applied through December 31, 2022. The Company is currently evaluating the impact of this guidance on its Condensed Consolidated Financial Statements.



## Revenue

9 Months Ended  
Sep. 30, 2021

### [Revenue from Contract with Customer \[Abstract\]](#)

#### [Revenue](#)

#### Revenue

#### Disaggregation of Revenue

The following table provides information about disaggregated revenue by major service offering, the timing of revenue recognition and disaggregated revenue by reportable segment. Refer to Note 4 – Segment Reporting for additional information on the Company's revenue.

(in millions)	Three Months Ended		
	September 30,		
	2021	2020	2019
<b>Commercial Industries:</b>			
Customer experience management	\$ 152	\$ 149	\$ 149
Business operations solutions	139	140	140
Commercial healthcare solutions	109	106	106
Human resource and learning services	109	123	123
<b>Total Commercial Industries</b>	<b>509</b>	<b>518</b>	<b>518</b>
<b>Government Services:</b>			
Government healthcare solutions	143	153	153
Government services solutions	206	195	195
<b>Total Government Services</b>	<b>349</b>	<b>348</b>	<b>348</b>
<b>Transportation:</b>			
Roadway charging & management services	79	83	83
Transit solutions	60	53	53
Curbside management solutions	22	18	18
Public safety solutions	17	19	19
Commercial vehicles	2	2	2
<b>Total Transportation</b>	<b>180</b>	<b>175</b>	<b>175</b>
<b>Total Consolidated Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$ 1,041</b>
<b>Timing of Revenue Recognition:</b>			
Point in time	\$ 26	\$ 23	\$ 23
Over time	1,012	1,018	1,018
<b>Total Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$ 1,041</b>

#### Contract Balances

The Company receives payments from customers based upon contractual billing schedules. Accounts receivable are recorded when consideration becomes unconditional. Contract assets are the Company's rights to consideration for services provided when the right to receive something other than passage of time (for example, meeting a milestone for the right to bill under the cost-to-cost measure of progress) is transferred to Accounts receivable, net when the rights to consideration become unconditional. Unearned income includes payments received in advance of performance under the contract, which are realized when the associated revenue is recognized under the contract.

The following table provides information about the balances of the Company's contract assets, unearned income and receivables from customers:

(in millions)	September 30, 2021
<b>Contract Assets (Unearned Income)</b>	
Current contract assets	\$ 159
Long-term contract assets <sup>(1)</sup>	8
Current unearned income	(111)
Long-term unearned income <sup>(2)</sup>	(39)
<b>Net Contract Assets (Unearned Income)</b>	<b>\$ 17</b>
Accounts receivable, net	\$ 701

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(1) Presented in Other long-term assets in the Condensed Consolidated Balance Sheets.

(2) Presented in Other long-term liabilities in the Condensed Consolidated Balance Sheets.

Revenues of \$11 million and \$99 million were recognized during the three and nine months ended September 30, 2021, respectively, Company's unearned income at December 31, 2020. Revenues of \$20 million and \$84 million were recognized during the three and nine months ended September 30, 2020, respectively, related to the Company's unearned income at December 31, 2019. The Company had no material charges related to contract assets for the three and nine months ended September 30, 2021 or 2020.

**Transaction Price Allocated to the Remaining Performance Obligations**

Estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied or partially satisfied as of September 30, 2021 was approximately \$1.3 billion. The Company expects to recognize approximately 76% of this revenue over the next 12 months and the remainder thereafter.

## Segment Reporting

9 Months Ended  
Sep. 30, 2021

### [Segment Reporting](#)

#### [\[Abstract\]](#)

### [Segment Reporting](#)

#### Segment Reporting

The Company's reportable segments correspond to how it organizes and manages the business, as defined by the Company's Chief Executive Officer (CEO), who is also the Company's Chief Operating Decision Maker (CODM), and are aligned to the industries in which the Company's clients operate. The Company's reportable segments involve the delivery of business process services and include service arrangements where it manages a customer's business process services.

The Company's financial performance is based on Segment Profit/(Loss) for its three reportable segments (Commercial Industries, Government Services and Transportation), Other and Unallocated Costs. The Company's CODM does not evaluate operating segments using discrete assets.

**Commercial Industries:** The Commercial Industries segment provides business process services and customized solutions to clients in various industries. Across the Commercial Industries segment, the Company operates on its clients' behalf to deliver mission-critical solutions that reduce costs, improve efficiencies and enable revenue growth for the Company's clients and their consumers and employees.

**Government Services:** The Government Services segment provides government-centric business process services to U.S. federal, state and foreign governments for public assistance program administration, transaction processing and payment services. The solutions in this segment respond to changing rules for eligibility and increasing citizen expectations.

**Transportation:** The Transportation segment provides systems and support, as well as revenue-generating services, to government agencies and authorities in the transportation industry, the Company delivers mission-critical mobility and payment solutions. Through automation, interoperability and decision-making to streamline operations, increase revenue and reduce congestion while creating seamless travel experiences for consumers.

Other includes the Company's Student Loan business, which the Company exited in the third quarter of 2018.

Unallocated Costs includes IT infrastructure costs that are shared by multiple reportable segments, enterprise application costs and overhead expenses not directly attributable or allocated to the reportable segments.

Selected financial information for the Company's reportable segments was as follows:

(in millions)	Three Months Ended September 30,				
	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs
<b>2021</b>					
Revenue	\$ 509	\$ 349	\$ 180	\$ —	\$ —
Segment profit (loss)	\$ 29	\$ 125	\$ 16	\$ —	\$ —
<b>2020</b>					
Revenue	\$ 518	\$ 348	\$ 175	\$ —	\$ —
Segment profit (loss)	\$ 32	\$ 122	\$ 26	\$ 6	\$ 6
(in millions)	Nine Months Ended September 30,				
	Commercial Industries	Government Services	Transportation	Other	Unallocated Costs
<b>2021</b>					
Revenue	\$ 1,538	\$ 1,005	\$ 549	\$ —	\$ —
Segment profit (loss)	\$ 93	\$ 322	\$ 54	\$ —	\$ —
<b>2020</b>					
Revenue	\$ 1,610	\$ 969	\$ 529	\$ —	\$ —
Segment profit (loss)	\$ 99	\$ 282	\$ 56	\$ 9	\$ 9

(in millions)	Three Months Ended		
	September 30,		
<b>Segment Profit (Loss) Reconciliation to Pre-tax Income (Loss)</b>	2021	2020	202
Income (Loss) Before Income Taxes	\$ 19	\$ (13)	\$
<u>Reconciling items:</u>			
Amortization of acquired intangible assets	31	60	
Restructuring and related costs	10	20	
Interest expense	12	14	
(Gain) loss on divestitures and transaction costs	—	8	
Litigation costs	—	—	
Loss on extinguishment of debt	—	—	
Other (income) expenses, net	4	(1)	
<b>Segment Pre-tax Income (Loss)</b>	<b>\$ 76</b>	<b>\$ 88</b>	<b>\$</b>

Refer to Note 3 – Revenue for additional information on disaggregated revenues of the reportable segments.

**9 Months Ended  
Sep. 30, 2021**

**Restructuring Programs**

[Restructuring and Related Activities \[Abstract\]](#)  
[Restructuring Programs](#)

**Restructuring Programs and Related Costs**

The Company engages in a series of restructuring programs related to downsizing its employee base, exiting certain activities, outsourcing functions and engaging in other actions designed to reduce its cost structure and improve productivity. The implementation of the Company's efficiency improvement initiatives has reduced the Company's real estate footprint across all geographies and segments resulting in impairments and other related costs. Also included in Restructuring and related costs are incremental, non-recurring costs related to the Company's data centers, which totaled \$4 million and \$8 million for the three months ended September 30, 2021 and 2020, respectively. Total restructuring charges were \$16 million for the nine months ended September 30, 2021 and 2020, respectively. Management continues to evaluate the Company's restructuring programs for the future, there may be additional provisions for new plan initiatives and/or changes in previously recorded estimates as payments are completed.

Costs associated with restructuring, including employee severance and lease termination costs, are generally recognized when it has become a liability has been incurred, which is generally upon communication to the affected employees or exit from the leased facility. In those instances where the Company has either a formal severance plan or a history of consistently providing severance benefits representing a substantive part of the employee severance costs when they are both probable and reasonably estimable. Asset impairment costs related to the reduction of the Company's footprint include impairment of operating lease right-of-use (ROU) assets and associated leasehold improvements.

A summary of the Company's restructuring program activity during the nine months ended September 30, 2021 and 2020 is as follows:

(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments
<b>Accrued Balance at December 31, 2020</b>	\$ 3	\$ 3	\$ —
Provision	2	23	7
Changes in estimates	—	(4)	—
<b>Total Net Current Period Charges<sup>(1)</sup></b>	<b>2</b>	<b>19</b>	<b>7</b>
Charges against reserve and currency	(4)	(21)	(7)
<b>Accrued Balance at September 30, 2021</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ —</b>

  

(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments
<b>Accrued Balance at December 31, 2019</b>	\$ 15	\$ 6	\$ —
Provision	13	19	15
Changes in estimates	1	2	—
<b>Total Net Current Period Charges<sup>(1)</sup></b>	<b>14</b>	<b>21</b>	<b>15</b>
Charges against reserve and currency	(22)	(24)	(15)
<b>Accrued Balance at September 30, 2020</b>	<b>\$ 7</b>	<b>\$ 3</b>	<b>\$ —</b>

(1) Represents amounts recognized within the Consolidated Statements of Income (Loss) for the years shown.

In addition, the Company recorded professional support costs associated with the implementation of certain strategic transformation programs of \$2 million for the three months ended September 30, 2021 and 2020, respectively, and \$3 million and \$6 million for the nine months ended September 30, 2021 and 2020, respectively.

The following table summarizes the total amount of costs incurred in connection with these restructuring programs by reportable and unallocated segment:

(in millions)	Three Months Ended September 30,		Nine Months Ended
	2021	2020	2021
Commercial Industries	\$ 1	\$ 4	\$ —
Government Services	—	—	—
Transportation	—	(1)	—
Unallocated Costs <sup>(1)</sup>	8	15	—
<b>Total Net Restructuring Charges</b>	<b>\$ 9</b>	<b>\$ 18</b>	<b>\$ —</b>

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(1) Represents costs related to the consolidation of the Company's data centers, operating lease ROU assets impairment, termination and other costs not allocated

## Debt

9 Months Ended  
Sep. 30, 2021

### [Debt Disclosure \[Abstract\]](#)

#### [Debt](#)

#### Debt

Long-term debt was as follows:

<i>(in millions)</i>	September 30, 2021
Term loan A due December 2022	\$ 585
Term loan B due December 2023	810
Senior notes due 2024	—
Finance lease obligations	18
Other loans	5
<b>Principal debt balance</b>	<b>1,418</b>
Debt issuance costs and unamortized discounts	(13)
Less: current maturities	(21)
<b>Total Long-term Debt</b>	<b>\$ 1,384</b>

As of September 30, 2021, the Company had no outstanding borrowings under its \$750 million Senior Revolving Credit Facility in effect as of September 30, 2021 (Prior Revolver). However, the Company has utilized \$10 million of the Prior Revolver to issue letters of credit. The net Prior Revolver drawn upon as of September 30, 2021 was \$740 million.

On May 1, 2021, the Company redeemed all the previously outstanding \$34 million 10.50% Senior Notes due 2024 and incurred \$2 million of debt extinguishment of debt.

On October 15, 2021, the Company closed on a debt refinancing and extended its maturity profile. As described in Note 17 - Subsequent Events, the Term Loan A due 2022 and the Term Loan B due 2023 (collectively, the 2016 Credit Facilities) were repaid and the Prior Revolver was terminated. Under applicable accounting rules, since the 2016 Credit Facilities were refinanced on a long-term basis before the issuance of these Consolidated Financial Statements, the Company has classified a portion of the current maturities related to the 2016 Credit Facilities to long-term debt as of September 30, 2021.

At December 31, 2020, the Company was in compliance with all debt covenants related to the borrowings in the table above. As a result of the 2021 refinancing, the Company's financial covenants have been waived until March 31, 2022.

## Financial Instruments

**9 Months Ended  
Sep. 30, 2021**

[Derivative Instruments and  
Hedging Activities  
Disclosure \[Abstract\]  
Financial Instruments](#)

### Financial Instruments

The Company is a global company that is exposed to foreign currency exchange rate fluctuations in the normal course of its business. As a part of the Company's foreign exchange risk management strategy, the Company uses derivative instruments, primarily forward contracts, to hedge the funding of foreign entities which have a non-dollar functional currency, thereby reducing volatility of earnings or protecting fair values of assets and liabilities.

At September 30, 2021 and December 31, 2020, the Company had outstanding forward exchange contracts with gross notional values of \$147 million and \$180 million, respectively. At September 30, 2021, approximately 72% of these contracts mature within three months, 11% in three to six months, 13% in six to twelve months and 4% in greater than twelve months. Most of these foreign currency derivative contracts are designated as cash flow hedges and did not have a material impact on the Company's balance sheet, income statement or cash flows for the periods presented.

Refer to Note 8 – Fair Value of Financial Assets and Liabilities for additional information regarding the fair value of the Company's foreign exchange forward contracts.



**Fair Value of Financial  
Assets and Liabilities**

**9 Months Ended  
Sep. 30, 2021**

**[Fair Value Disclosures](#)**

**[\[Abstract\]](#)**

**[Fair Value of Financial Assets  
and Liabilities](#)**

**Fair Value of Financial Assets and Liabilities**

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. U.S. GAAP established a hierarchy framework to classify the fair value based on the observability of significant inputs used in the measurement. The levels of the fair value hierarchy are as follows:

Level 1: Fair value is determined using an unadjusted quoted price in an active market for identical assets or liabilities.

Level 2: Fair value is estimated using inputs other than quoted prices included within Level 1 that are observable, either directly or indirectly, through market data.

Level 3: Fair value is estimated using unobservable inputs that are significant to the fair value of the assets or liabilities.

**Summary of Financial Assets and Liabilities Accounted for at Fair Value on a Recurring Basis**

The following table represents assets and liabilities measured at fair value on a recurring basis. The basis for the measurement at fair value is as follows:

(in millions)	September 30, 2021	
<b>Assets:</b>		
Foreign exchange contract - forward	\$	1
<b>Total Assets</b>	<b>\$</b>	<b>1</b>
<b>Liabilities:</b>		
Foreign exchange contracts - forward	\$	2
<b>Total Liabilities</b>	<b>\$</b>	<b>2</b>

**Summary of Other Financial Assets and Liabilities**

The estimated fair values of other financial assets and liabilities were as follows:

(in millions)	September 30, 2021		Debt
	Carrying Amount	Fair Value	
<b>Liabilities:</b>			
Long-term debt	\$ 1,384	\$ 1,372	\$

The fair value amounts for Cash and cash equivalents, Restricted cash, Accounts receivable, net and Short-term debt approximate carrying amounts due to the short-term maturities of these instruments.

The fair value of Long-term debt was estimated using quoted market prices for identical or similar instruments (Level 2 in the fair value hierarchy).

## Employee Benefit Plans

**9 Months Ended  
Sep. 30, 2021**

### Retirement Benefits

#### [Abstract]

#### Employee Benefit Plans

#### Employee Benefit Plans

The Company has post-retirement savings and investment plans in several countries, including the U.S., U.K. and Canada. In many instances, employees participating in defined benefit pension plans that have been amended to freeze future service accruals were transitioned to an enhanced defined contribution plan. In these plans, employees are permitted to contribute a portion of their salaries and bonuses to the plans. Historically, the Company matched a portion of employee contributions. Beginning in 2019, the Company suspended its match to the 401(k) plan for all U.S. salaried employees and extended the suspension to all U.S. hourly employees in the second quarter of 2020. However, the Company match was reinstated for all U.S. employees in November of 2020.

The Company recognized an expense related to its defined contribution plans of \$6 million and \$1 million for the three months ended September 30, 2021 and 2020, respectively. The Company recognized an expense related to its defined contribution plans of \$16 million and \$2 million for the nine months ended September 30, 2021 and 2020, respectively. The balance sheet and income statement impacts of any remaining defined benefit plans are immaterial for all periods presented in these Consolidated Condensed Financial Statements.

**Accumulated Other  
Comprehensive Loss  
(AOCL)**

**9 Months Ended**

**Sep. 30, 2021**

[Equity \[Abstract\]](#)

[Accumulated Other](#)

[Comprehensive Loss \(AOCL\)](#)

Accumulated Other Comprehensive Loss (AOCL)

Below are the balances and changes in AOCL<sup>(1)</sup>:

<i>(in millions)</i>	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Bene Pension Item
<b>Balance at December 31, 2020</b>	\$ (400)	\$ 3	\$
Other comprehensive income (loss)	(23)	(1)	
<b>Balance at September 30, 2021</b>	<b>\$ (423)</b>	<b>\$ 2</b>	<b>\$</b>
<i>(in millions)</i>	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Bene Pension Item
<b>Balance at December 31, 2019</b>	\$ (408)	\$ 3	\$
Other comprehensive income (loss)	(15)	—	
<b>Balance at September 30, 2020</b>	<b>\$ (423)</b>	<b>\$ 3</b>	<b>\$</b>

(1) All amounts are net of tax. Tax effects were immaterial.

## Commitment and Contingencies

9 Months Ended  
Sep. 30, 2021

### [Commitments and Contingencies Disclosure](#)

#### [\[Abstract\]](#)

#### [Contingencies and Litigation](#)

#### Contingencies and Litigation

As more fully discussed below, the Company is involved in a variety of claims, lawsuits, investigations and proceedings concerning a variety of matters, including: governmental entity contracting, servicing and procurement law; intellectual property law; employment law; commercial and contracts law; the Employee Retirement Income Security Act (ERISA); and other laws and regulations. The Company determines whether an estimated loss from a contingency should be accrued by assessing whether a loss is deemed probable and can be reasonably estimated. The Company assesses its potential liability by analyzing its litigation and regulatory matters using available information. The Company develops its view on estimated losses in consultation with outside counsel handling its defense in these matters, which involves an analysis of potential results, assuming a combination of litigation and settlement strategies. Should developments in any of these matters cause a change in the Company's determination as to an unfavorable outcome and result in the need to recognize a material accrual, or should any of these matters result in a final adverse judgment or be settled for significant amounts in excess of any accrual for such matter or matters, this could have a material adverse effect on the Company's results of operations, cash flows and financial position in the period or periods in which such change in determination, judgment or settlement occurs. The Company believes it has recorded adequate provisions for any such matters as of September 30, 2021. Litigation is inherently unpredictable, and it is not possible to predict the ultimate outcome of these matters and such outcome in any such matters could be in excess of any amounts accrued and could be material to the Company's results of operations, cash flows or financial position in any reporting period.

Additionally, guarantees, indemnifications and claims arise during the ordinary course of business from relationships with suppliers, customers and non-consolidated affiliates when the Company undertakes an obligation to guarantee the performance of others if specified triggering events occur. Nonperformance under a contract could trigger an obligation of the Company. These potential claims include actions based upon alleged exposures to products, real estate, intellectual property such as patents, environmental matters and other indemnifications. The ultimate effect on future financial results is not subject to reasonable estimation because considerable uncertainty exists as to the outcome of these claims. However, while the ultimate liabilities resulting from such claims may be significant to results of operations in the period recognized, management does not anticipate they will have a material adverse effect on the Company's Consolidated Financial position or liquidity. As of September 30, 2021, the Company had accrued its estimate of liability incurred under its indemnification arrangements and guarantees.

#### [Litigation Against the Company](#)

**[Employees' Retirement System of the Puerto Rico Electric Power Authority et al v.](#)**

**[Conduent Inc. et al.](#)**: On March 8, 2019, a putative class action lawsuit alleging violations of certain federal securities laws in connection with our statements and alleged omissions regarding our financial guidance and business and operations was filed against us, our former Chief Executive Officer, and our former Chief Financial Officer in the United States District Court for the District of New Jersey. The complaint seeks certification of a class of all persons who purchased or otherwise acquired our securities from February 21, 2018 through November 6, 2018, and also seeks unspecified monetary damages, costs, and attorneys' fees. We moved to dismiss the class action complaint in its entirety. In June 2020, the court denied the motion to dismiss and allowed the claims to proceed. We intend to defend the litigation vigorously. The Company maintains insurance that may cover any costs arising out of this litigation up to the insurance limits, and subject to meeting certain deductibles and to other terms and conditions thereof. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

**[Skyview Capital LLC and Continuum Global Solutions, LLC v. Conduent Business Services, LLC](#)**:

On February 3, 2020, plaintiffs filed a lawsuit in the Superior Court of New York County, New York. The lawsuit relates to the sale of a portion of Conduent Business Service, LLC's (CBS) select standalone customer care call center business to plaintiffs, which sale closed in February 2019. Under the terms of the sale agreement, CBS received approximately \$23 million of notes from plaintiffs (Notes). The lawsuit alleges various causes of action in connection with the acquisition, including: indemnification for breach of representation and warranty; indemnification for breach of contract; and fraud. Plaintiffs allege that their obligation to mitigate damages and their contractual right of set-off permits them to withhold and deduct from any amounts that are owed to CBS under the Notes, and plaintiffs seek a judgement that they have no obligation to pay the Notes. On August 20, 2020, Conduent filed a counterclaim against Skyview LLC (Skyview) seeking the outstanding balance on the Notes, the amounts owed for the Jamaica deferred closing, and other transition services agreement and late rent payment obligations. Conduent also moved to dismiss Skyview's claims in 2020. In May 2021, the court denied the motion and allowed the claims to proceed. Conduent denies all of the plaintiffs' allegations, believes that it has strong defenses to all of plaintiffs' claims and it intends to defend the litigation vigorously. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

**[Dennis Nasrawi v. Buck Consultants et al.](#)**: On October 8, 2009, plaintiffs filed a lawsuit in the Superior Court of California, Stanislaus County, and on November 24, 2009, the case was removed to the U.S. Court for the Eastern District of California, Fresno Division. Plaintiffs allege actuarial negligence against Buck Consultants, LLC (Buck), which was a wholly-owned subsidiary of Conduent, for the use of faulty actuarial assumptions in connection with the 2007 actuarial valuation for the Stanislaus County Employees Retirement Association (StanCERA). Plaintiffs allege that the employer contribution rate adopted by StanCERA based on Buck's valuation was insufficient to fund the benefits promised by the County. On July 13, 2012, the Court entered its ruling that the plaintiffs lacked standing to sue in a representative capacity on behalf of all plan participants. The Court also ruled that plaintiffs had adequately pleaded their claim that

Buck allegedly aided and abetted StanCERA in breaching its fiduciary duty. Plaintiffs then filed their Fifth Amended Complaint and added StanCERA to the litigation. Buck and StanCERA filed demurrers to the amended complaint. On September 13, 2012, the Court sustained both demurrers with prejudice, completely dismissing the matter and barring plaintiffs from refiling their claims. Plaintiffs appealed, and ultimately the California Court of Appeals (Sixth District) reversed the trial court's ruling and remanded the case back to the trial court as to Buck only, and only with respect to plaintiff's claim of aiding and abetting StanCERA in breaching its fiduciary duty. This case has been stayed pending the outcome of parallel litigation the plaintiffs are pursuing against StanCERA. The parallel litigation was tried before the bench in June 2018, and on January 24, 2019, the court found in favor of StanCERA, holding that it had not breached its fiduciary duty to plaintiffs. On April 26, 2019, plaintiffs in the parallel litigation filed an appeal. Nasrawi remains stayed until the parallel litigation is finally concluded. Absent the court finding that StanCERA breached its fiduciary duty, plaintiffs' claim against Buck for aiding and abetting said breach would not appear viable. Buck will continue to aggressively defend these lawsuits. In August 2018, Conduent sold Buck; however, the Company retained this liability after the sale. The Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

**[Conduent Business Services, LLC v. Cognizant Business Services](#)**

**Corporation:** On April 12, 2017, CBS filed a lawsuit against Cognizant Business Services Corporation (Cognizant) in the Supreme Court of New York County, New York. The lawsuit relates to the Amended and Restated Master Outsourcing Services Agreement effective as of October 24, 2012, and the service delivery contracts and work orders thereunder, between CBS and Cognizant, as amended and supplemented (Contract). The Contract contains certain minimum purchase obligations by CBS through the date of expiration. The lawsuit alleges that Cognizant committed multiple breaches of the Contract, including Cognizant's failure to properly perform its obligations as subcontractor to CBS under CBS's contract with the New York Department of Health to provide Medicaid Management Information Systems. In the lawsuit, CBS seeks damages in excess of \$150 million. During the first quarter of 2018, CBS provided notice to Cognizant that it was terminating the Contract for cause and recorded in the same period certain charges associated with the termination. CBS also alleges that it terminated the Contract for cause, because, among other things, Cognizant violated the Foreign Corrupt Practices Act. In its answer, Cognizant asserted two counterclaims for breach of contract seeking recovery of damages in excess of \$47 million, which includes amounts alleged not paid to Cognizant under the Contract and an alleged \$25 million termination fee. Cognizant's second amended counterclaim increased Cognizant's damages to \$89 million. CBS will continue to vigorously defend itself against the counterclaims but the Company is not able to determine or predict the ultimate outcome of this proceeding or reasonably provide an estimate or range of estimate of the possible outcome or loss, if any, in excess of currently recorded reserves.

**Other Matters**

Since 2014, Xerox Education Services, Inc. (XES) has cooperated with several federal and state agencies regarding a variety of matters, including XES' self-disclosure to the U.S. Department of Education (Department) and the Consumer Financial Protection Bureau (CFPB) that some third-party student loans under outsourcing arrangements for

various financial institutions required adjustments. With the exception of an inquiry the Illinois Attorney General's Office recently commenced, the Company has resolved the investigations the CFPB and several state agencies commenced and continues to work with the Department and the U.S. Department of Justice to resolve all outstanding issues, including a number of operational projects that XES discovered and disclosed since 2014. The Company cannot provide assurance that the CFPB, another regulator, a financial institution on behalf of which the Company serviced third-party student loans, or another party will not ultimately commence a legal action against XES in which fines, penalties or other liabilities are sought from XES. Nor is the Company able to predict the likely outcome of these matters, should any such matter be commenced, or reasonably provide an estimate or range of estimates of any loss in excess of currently recorded reserves. The Company could, in future periods, incur judgments or enter into settlements to resolve these potential matters for amounts in excess of current reserves and there could be a material adverse effect on the Company's results of operations, cash flows and financial position in the period in which such change in judgment or settlement occurs.

### **Other Contingencies**

Certain contracts, primarily in the Company's Government Services and Transportation segments, require the Company to provide a surety bond or a letter of credit as a guarantee of performance. As of September 30, 2021, the Company had \$553 million of outstanding surety bonds used to secure its performance of contractual obligations with its clients and \$94 million of outstanding letters of credit issued to secure the Company's performance of contractual obligations to its clients as well as other corporate obligations. In general, the Company would only be liable for the amount of these guarantees in the event of default in the Company's performance of its obligations under each contract. The Company believes it has sufficient capacity in the surety markets and liquidity from its cash flow and its various credit arrangements to allow it to respond to future requests for proposals that require such credit support.

## Preferred Stock

**9 Months Ended  
Sep. 30, 2021**

[Temporary Equity  
Disclosure \[Abstract\]](#)

[Preferred Stock](#)

Preferred Stock

### **Series A Preferred Stock**

In December 2016, the Company issued 120,000 shares of Series A convertible perpetual preferred stock with an aggregate liquidation preference of \$120 million and an initial fair value of \$142 million. The convertible preferred stock earns quarterly cash dividends at a rate of 8% per year (\$9.6 million per year). Each share of convertible preferred stock is convertible at any time, at the option of the holder, into 44.9438 shares of common stock for a total of 5,393,000 shares (reflecting an initial conversion price of approximately \$22.25 per share of common stock), subject to customary anti-dilution adjustments.



## Earnings (Loss) Per Share

9 Months Ended  
Sep. 30, 2021

### [Earnings Per Share](#)

#### [\[Abstract\]](#)

### [Earnings \(Loss\) Per Share](#)

#### Earnings (Loss) per Share

The Company did not declare any common stock dividends in the periods presented.

The following table sets forth the computation of basic and diluted earnings (loss) per share of common stock:

	Three Months Ended		
	September 30,		
	2021	2020	2021
<i>(in millions, except per share data in whole dollars and shares in thousands)</i>			
Net Income (Loss)	\$ 11	\$ (7)	\$
Dividend - Preferred Stock	(2)	(2)	
Adjusted Net Income (Loss) Available to Common Shareholders	\$ 9	\$ (9)	\$
Weighted Average Common Shares Outstanding - Basic	212,633	209,244	2
Common Shares Issuable With Respect To:			
Restricted Stock And Performance Units / Shares	7,184	—	
Weighted Average Common Shares Outstanding - Diluted	219,817	209,244	2
<b>Net Earnings (Loss) per Share:</b>			
Basic	\$ 0.04	\$ (0.04)	\$
Diluted	\$ 0.04	\$ (0.04)	\$

The following securities were not included in the computation of diluted earnings per share as they were either contingently issuable shares or shares that if included (shares in thousands):

Restricted stock and performance shares/units	3,606	16,196	
Convertible preferred stock	5,393	5,393	
<b>Total Anti-Dilutive and Contingently Issuable Securities</b>	<b>8,999</b>	<b>21,589</b>	

Supplementary Financial  
Information

9 Months Ended  
Sep. 30, 2021

[Supplementary Financial  
Information \[Abstract\]](#)

[Supplementary Financial  
Information](#)

Supplementary Financial Information

The components of Other assets and Other liabilities were as follows:

(in millions)	September 30, 2021
<b>Other Current Assets</b>	
Prepaid expenses	\$ 96
Income taxes receivable	42
Value-added tax (VAT) receivable	16
Restricted cash	6
Current portion of capitalized cloud computing implementation costs, net	10
Other	87
<b>Total Other Current Assets</b>	<b>\$ 257</b>
<b>Other Current Liabilities</b>	
Accrued liabilities	\$ 232
Litigation related accruals	64
Current operating lease liabilities	71
Restructuring liabilities	2
Income tax payable	18
Other taxes payable	14
Other	33
<b>Total Other Current Liabilities</b>	<b>\$ 434</b>
<b>Other Long-term Assets</b>	
Internal use software, net	\$ 177
Deferred contract costs, net	73
Product software, net	90
Cloud computing implementation costs, net	31
Other	104
<b>Total Other Long-term Assets</b>	<b>\$ 475</b>
<b>Other Long-term Liabilities</b>	
Deferred payroll tax related to the CARES Act <sup>(1)</sup>	\$ 24
Income tax liabilities	16
Unearned income	39
Restructuring liabilities	—
Other	35
<b>Total Other Long-term Liabilities</b>	<b>\$ 114</b>

(1) The CARES Act allowed for deferred payment of the employer-paid portion of social security taxes through the end of 2020, with 50% due on December 31, 2021 and 50% due on December 31, 2022. The current portion of this liability is included in Accrued compensation and benefits costs.

## Related Party Disclosures

9 Months Ended  
Sep. 30, 2021

### [Related Party Transactions](#)

#### [\[Abstract\]](#)

#### [Related Party Transactions](#)

#### Related Party Transactions

In the normal course of business, the Company provides services to, and purchases from, certain related parties with the same shares provided to these entities included those related to human resources, end-user support and other services and solutions. The purchases included office equipment and related services and supplies. In addition, we have a receivable related to certain income tax matters with a company, Xerox Corporation. Revenue and purchases from these entities were included in Revenue and Costs of services / Selling, administrative, respectively, on the Company's Condensed Consolidated Statements of Income (Loss).

Transactions with related parties were as follows:

(in millions)	Three Months Ended		September 30,	September 30,		
	2021	2020		2021	2020	
Revenue from related parties	\$	3	\$	6	\$	11
Purchases from related parties	\$	6	\$	8	\$	2

The Company's receivable and payable balances with related party entities were not material as of September 30, 2021 and December 31, 2020.

## Goodwill

9 Months Ended  
Sep. 30, 2021

[Goodwill and Intangible  
Assets Disclosure \[Abstract\]](#)

[Goodwill](#)

### Goodwill

The following table presents the changes in the carrying amount of goodwill, by reportable segment:

(in millions)	Commercial Industries	Government Services	Transportation
<b>Balance at December 31, 2020</b>	\$ 837	\$ 623	\$ 68
Foreign currency translation	(11)	(4)	(7)
<b>Balance at September 30, 2021</b>	<u>\$ 826</u>	<u>\$ 619</u>	<u>\$ 61</u>
Gross goodwill	\$ 2,379	\$ 1,373	\$ 641
Accumulated impairment	(1,553)	(754)	(580)
<b>Balance at September 30, 2021</b>	<u>\$ 826</u>	<u>\$ 619</u>	<u>\$ 61</u>

In the first, second and third quarters of 2021, the Company performed its ongoing assessment to consider whether events or circumstances that could more likely than not reduce the fair value of a reporting unit below its carrying value. After evaluating and weighing all relevant circumstances, the Company concluded that it is not more likely than not that the fair values of any of its reporting units were less than their carrying values. Consequently, the Company determined that it was not necessary to perform an interim impairment test for any of its reporting units. To the extent the COVID-19 pandemic continues to disrupt the economic environment, such as a decline in the performance of reporting units or loss of a significant contract or multiple significant contracts, the fair value of one or more of the reporting units could fall below their carrying value, resulting in a goodwill impairment charge.

## Subsequent Event

9 Months Ended  
Sep. 30, 2021

[Subsequent Events](#)

[\[Abstract\]](#)

[Subsequent Event](#)

### Subsequent Event

On October 15, 2021, the Company closed on a debt refinancing and extended its maturity profile. The debt refinancing transactions

<u>(in millions)</u>	<u>Amount</u>	
Term Loan A due 2026	\$	265
Term Loan B due 2028		515
Secured Notes due 2029		520
Total new debt excluding revolving credit facility	\$	1,300
Revolving Credit Facility maturing 2026	\$	550

*\* subject to a floor of 50 basis points*

Upon closing the debt refinancing, \$100 million was borrowed under the new Revolving Credit Facility (Revolver). The net proceeds 2026, Term Loan B due 2028, Secured Notes due 2029 and \$100 million of borrowing under the Revolver were used to repay borrow Credit Facilities that were outstanding on October 15, 2021. The amounts repaid were \$587 million for Term Loan A due 2022 and \$ Loan B due 2023. As a part of the transactions, the Prior Revolver was terminated.

**Recent Accounting  
Pronouncements (Policies)**

**9 Months Ended  
Sep. 30, 2021**

[Accounting Policies](#)

[\[Abstract\]](#)

[New Accounting Standards  
Adopted and to Be Adopted](#)

**New Accounting Standards Adopted**

**Income Taxes:** In December 2019, the Financial Accounting Standards Board (FASB) issued final guidance that simplified the accounting for income taxes by eliminating some exceptions to the general approach in Accounting Standards Codification (ASC) 740, Income Taxes. This final guidance was effective for fiscal years beginning January 1, 2021. The Company adopted the final income taxes guidance as of January 1, 2021. The adoption did not have any material impact on the Company's Condensed Consolidated Financial Statements.

**New Accounting Standards To Be Adopted**

**Reference Rate Reform:** In March 2020, the FASB issued updated guidance relating to the accounting for the discontinuation of the London Inter-bank Offered Rate (LIBOR), referred to as reference rate reform. This guidance provides optional practical expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. This guidance is applicable to contract modifications that replace a reference LIBOR rate affected by reference rate reform. The amendments may be applied through December 31, 2022. The Company is currently evaluating the impact of this guidance on its Condensed Consolidated Financial Statements.

## Revenue (Tables)

9 Months Ended  
Sep. 30, 2021

### [Revenue from Contract with Customer \[Abstract\]](#)

### [Disaggregation of Revenue by Major Service Line](#)

The following table provides information about disaggregated revenue by major service offering, the timing of revenue recognition and disaggregated revenue by reportable segment. Refer to Note 4 – Segment Reporting for additional information on the Company's re

(in millions)	Three Months Ended		
	September 30,		
	2021	2020	2021
<b>Commercial Industries:</b>			
Customer experience management	\$ 152	\$ 149	\$
Business operations solutions	139	140	
Commercial healthcare solutions	109	106	
Human resource and learning services	109	123	
<b>Total Commercial Industries</b>	<b>509</b>	<b>518</b>	
<b>Government Services:</b>			
Government healthcare solutions	143	153	
Government services solutions	206	195	
<b>Total Government Services</b>	<b>349</b>	<b>348</b>	
<b>Transportation:</b>			
Roadway charging & management services	79	83	
Transit solutions	60	53	
Curbside management solutions	22	18	
Public safety solutions	17	19	
Commercial vehicles	2	2	
<b>Total Transportation</b>	<b>180</b>	<b>175</b>	
<b>Total Consolidated Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$</b>
<b>Timing of Revenue Recognition:</b>			
Point in time	\$ 26	\$ 23	\$
Over time	1,012	1,018	
<b>Total Revenue</b>	<b>\$ 1,038</b>	<b>\$ 1,041</b>	<b>\$</b>

### [Schedule of Contract Assets, Unearned Income and Receivables from Contracts with Customers](#)

The following table provides information about the balances of the Company's contract assets, unearned income and receivables from customers:

(in millions)	September 30, 2021	
<b>Contract Assets (Unearned Income)</b>		
Current contract assets	\$ 159	
Long-term contract assets <sup>(1)</sup>	8	
Current unearned income		(111)
Long-term unearned income <sup>(2)</sup>		(39)
<b>Net Contract Assets (Unearned Income)</b>	<b>\$ 17</b>	
Accounts receivable, net	\$	701

(1) Presented in Other long-term assets in the Condensed Consolidated Balance Sheets.

(2) Presented in Other long-term liabilities in the Condensed Consolidated Balance Sheets.

## Segment Reporting (Tables)

9 Months Ended  
Sep. 30, 2021

[Segment Reporting \[Abstract\]](#)  
[Schedule of reportable segments](#)

Selected financial information for the Company's reportable segments was as follows:

(in millions)	Three Months Ended September 30,				
	Commercial Industries	Government Services	Transportation	Other	Unallocated
<b>2021</b>					
Revenue	\$ 509	\$ 349	\$ 180	\$ —	\$ —
Segment profit (loss)	\$ 29	\$ 125	\$ 16	\$ —	\$ —
<b>2020</b>					
Revenue	\$ 518	\$ 348	\$ 175	\$ —	\$ —
Segment profit (loss)	\$ 32	\$ 122	\$ 26	\$ 6	\$ 6

(in millions)	Nine Months Ended September 30,				
	Commercial Industries	Government Services	Transportation	Other	Unallocated
<b>2021</b>					
Revenue	\$ 1,538	\$ 1,005	\$ 549	\$ —	\$ —
Segment profit (loss)	\$ 93	\$ 322	\$ 54	\$ —	\$ —
<b>2020</b>					
Revenue	\$ 1,610	\$ 969	\$ 529	\$ —	\$ —
Segment profit (loss)	\$ 99	\$ 282	\$ 56	\$ 9	\$ 9

[Reconciliation to pre-tax income \(loss\)](#)

(in millions)	Three Months Ended September 30,		
	2021	2020	2020
<b>Segment Profit (Loss) Reconciliation to Pre-tax Income (Loss)</b>			
Income (Loss) Before Income Taxes	\$ 19	\$ (13)	\$ —
<b>Reconciling items:</b>			
Amortization of acquired intangible assets	31	60	—
Restructuring and related costs	10	20	—
Interest expense	12	14	—
(Gain) loss on divestitures and transaction costs	—	8	—
Litigation costs	—	—	—
Loss on extinguishment of debt	—	—	—
Other (income) expenses, net	4	(1)	—
<b>Segment Pre-tax Income (Loss)</b>	<b>\$ 76</b>	<b>\$ 88</b>	<b>\$ —</b>



**Restructuring Programs  
(Tables)**

[Restructuring and Related Activities \[Abstract\]](#)  
[Restructuring Program Activity](#)

**9 Months Ended  
Sep. 30, 2021**

A summary of the Company's restructuring program activity during the nine months ended September 30, 2021 and 2020 is as follows:

(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments
<b>Accrued Balance at December 31, 2020</b>	\$ 3	\$ 3	\$ —
Provision	2	23	7
Changes in estimates	—	(4)	—
Total Net Current Period Charges <sup>(1)</sup>	2	19	7
Charges against reserve and currency	(4)	(21)	(7)
<b>Accrued Balance at September 30, 2021</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ —</b>

  

(in millions)	Severance and Related Costs	Termination and Other Costs	Asset Impairments
<b>Accrued Balance at December 31, 2019</b>	\$ 15	\$ 6	\$ —
Provision	13	19	15
Changes in estimates	1	2	—
Total Net Current Period Charges <sup>(1)</sup>	14	21	15
Charges against reserve and currency	(22)	(24)	(15)
<b>Accrued Balance at September 30, 2020</b>	<b>\$ 7</b>	<b>\$ 3</b>	<b>\$ —</b>

[Total Costs incurred with Restructuring programs, by segment](#)

The following table summarizes the total amount of costs incurred in connection with these restructuring programs by reportable and segment:

(in millions)	Three Months Ended September 30,		2021
	2021	2020	
Commercial Industries	\$ 1	\$ 4	\$ —
Government Services	—	—	—
Transportation	—	(1)	—
Unallocated Costs <sup>(1)</sup>	8	15	—
<b>Total Net Restructuring Charges</b>	<b>\$ 9</b>	<b>\$ 18</b>	<b>\$ —</b>

(1) Represents costs related to the consolidation of the Company's data centers, operating lease ROU assets impairment, termination and other costs not allocated

## Debt (Tables)

9 Months Ended  
Sep. 30, 2021[Debt Disclosure \[Abstract\]](#)  
[Schedule of Long-term Debt](#)  
[Instruments](#)

Long-term debt was as follows:

(in millions)	September 30, 2021	
Term loan A due December 2022	\$	585
Term loan B due December 2023		810
Senior notes due 2024		—
Finance lease obligations		18
Other loans		5
<b>Principal debt balance</b>		<b>1,418</b>
Debt issuance costs and unamortized discounts		(13)
Less: current maturities		(21)
<b>Total Long-term Debt</b>	<b>\$</b>	<b>1,384</b>

The debt refinancing transactions were as follows:

(in millions)	Amount	
Term Loan A due 2026	\$	265
Term Loan B due 2028		515
Secured Notes due 2029		520
Total new debt excluding revolving credit facility	\$	1,300
Revolving Credit Facility maturing 2026	\$	550

\* *subject to a floor of 50 basis points*

**Fair Value of Financial  
Assets and Liabilities  
(Tables)**

**9 Months Ended  
Sep. 30, 2021**

**Fair Value Disclosures**

**[Abstract]**

**Fair value of financial assets  
and liabilities**

The following table represents assets and liabilities measured at fair value on a recurring basis. The basis for the measurement at fair value is Level 2.

(in millions)	September 30, 2021	
<b>Assets:</b>		
Foreign exchange contract - forward	\$	1 \$
<b>Total Assets</b>	<b>\$</b>	<b>1 \$</b>
<b>Liabilities:</b>		
Foreign exchange contracts - forward	\$	2 \$
<b>Total Liabilities</b>	<b>\$</b>	<b>2 \$</b>

**Estimated fair values of  
financial assets and liabilities  
not measured at fair value on a  
recurring basis**

The estimated fair values of other financial assets and liabilities were as follows:

(in millions)	September 30, 2021		De
	Carrying Amount	Fair Value	Carrying Amount
<b>Liabilities:</b>			
Long-term debt	\$ 1,384	\$ 1,372	\$

**Accumulated Other  
Comprehensive Loss  
(AOCL) (Tables)**

[Equity \[Abstract\]](#)

[Schedule of Accumulated  
Other Comprehensive Loss](#)

**9 Months Ended**

**Sep. 30, 2021**

Below are the balances and changes in AOCL<sup>(1)</sup>:

<i>(in millions)</i>	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Bene Pension Item
<b>Balance at December 31, 2020</b>	\$ (400)	\$ 3	\$
Other comprehensive income (loss)	(23)	(1)	
<b>Balance at September 30, 2021</b>	<b>\$ (423)</b>	<b>\$ 2</b>	<b>\$</b>
<i>(in millions)</i>	Currency Translation Adjustments	Gains (Losses) on Cash Flow Hedges	Defined Bene Pension Item
<b>Balance at December 31, 2019</b>	\$ (408)	\$ 3	\$
Other comprehensive income (loss)	(15)	—	
<b>Balance at September 30, 2020</b>	<b>\$ (423)</b>	<b>\$ 3</b>	<b>\$</b>

(1) All amounts are net of tax. Tax effects were immaterial.

**Earnings (Loss) Per Share  
(Tables)**

**9 Months Ended  
Sep. 30, 2021**

[Earnings Per Share  
\[Abstract\]](#)

[Schedule of Earnings Per  
Share, Basic and Diluted](#)

The following table sets forth the computation of basic and diluted earnings (loss) per share of common stock:

	Three Months Ended		
	September 30,		
	2021	2020	2021
<i>(in millions, except per share data in whole dollars and shares in thousands)</i>			
Net Income (Loss)	\$ 11	\$ (7)	\$
Dividend - Preferred Stock	(2)	(2)	
Adjusted Net Income (Loss) Available to Common Shareholders	\$ 9	\$ (9)	\$
Weighted Average Common Shares Outstanding - Basic	212,633	209,244	2
Common Shares Issuable With Respect To:			
Restricted Stock And Performance Units / Shares	7,184	—	
Weighted Average Common Shares Outstanding - Diluted	219,817	209,244	2
<b>Net Earnings (Loss) per Share:</b>			
Basic	\$ 0.04	\$ (0.04)	\$
Diluted	\$ 0.04	\$ (0.04)	\$

The following securities were not included in the computation of diluted earnings per share as they were either contingently issuable shares or shares that if included (shares in thousands):

Restricted stock and performance shares/units	3,606	16,196	
Convertible preferred stock	5,393	5,393	
<b>Total Anti-Dilutive and Contingently Issuable Securities</b>	<b>8,999</b>	<b>21,589</b>	

Supplementary Financial  
Information (Tables)

[Supplementary Financial  
Information \[Abstract\]](#)

[Supplementary Financial  
Information Table](#)

9 Months Ended  
Sep. 30, 2021

The components of Other assets and Other liabilities were as follows:

(in millions)	September 30, 2021
<b>Other Current Assets</b>	
Prepaid expenses	\$ 96
Income taxes receivable	42
Value-added tax (VAT) receivable	16
Restricted cash	6
Current portion of capitalized cloud computing implementation costs, net	10
Other	87
<b>Total Other Current Assets</b>	<b>\$ 257</b>
<b>Other Current Liabilities</b>	
Accrued liabilities	\$ 232
Litigation related accruals	64
Current operating lease liabilities	71
Restructuring liabilities	2
Income tax payable	18
Other taxes payable	14
Other	33
<b>Total Other Current Liabilities</b>	<b>\$ 434</b>
<b>Other Long-term Assets</b>	
Internal use software, net	\$ 177
Deferred contract costs, net	73
Product software, net	90
Cloud computing implementation costs, net	31
Other	104
<b>Total Other Long-term Assets</b>	<b>\$ 475</b>
<b>Other Long-term Liabilities</b>	
Deferred payroll tax related to the CARES Act <sup>(1)</sup>	\$ 24
Income tax liabilities	16
Unearned income	39
Restructuring liabilities	—
Other	35
<b>Total Other Long-term Liabilities</b>	<b>\$ 114</b>

(1) The CARES Act allowed for deferred payment of the employer-paid portion of social security taxes through the end of 2020, with 50% due on December 31, 2021 and 50% due on December 31, 2022. The current portion of this liability is included in Accrued compensation and benefits costs.

**Related Party Disclosures  
(Tables)**

**9 Months Ended  
Sep. 30, 2021**

[Related Party Transactions  
\[Abstract\]](#)  
[Schedule of Related Party  
Transactions](#)

Transactions with related parties were as follows:

	Three Months Ended			Nine M	
	September 30,			Sept	
(in millions)	2021	2020	2021		
Revenue from related parties	\$ 3	\$ 6	\$	1	
Purchases from related parties	\$ 6	\$ 8	\$	2	

Goodwill (Tables)

9 Months Ended  
Sep. 30, 2021

[Goodwill and Intangible  
Assets Disclosure \[Abstract\]  
Schedule of Goodwill](#)

The following table presents the changes in the carrying amount of goodwill, by reportable segment:

<u>(in millions)</u>	Commercial Industries	Government Services	Transportation
<b>Balance at December 31, 2020</b>	\$ 837	\$ 623	\$ 68
Foreign currency translation	(11)	(4)	(7)
<b>Balance at September 30, 2021</b>	<u>\$ 826</u>	<u>\$ 619</u>	<u>\$ 61</u>
Gross goodwill	\$ 2,379	\$ 1,373	\$ 641
Accumulated impairment	(1,553)	(754)	(580)
<b>Balance at September 30, 2021</b>	<u>\$ 826</u>	<u>\$ 619</u>	<u>\$ 61</u>



Subsequent Event (Tables)

9 Months Ended  
Sep. 30, 2021

[Subsequent Events](#)

[\[Abstract\]](#)

[Schedule of Long-term Debt Instruments](#)

Long-term debt was as follows:

(in millions)	September 30, 2021
Term loan A due December 2022	\$ 585
Term loan B due December 2023	810
Senior notes due 2024	—
Finance lease obligations	18
Other loans	5
<b>Principal debt balance</b>	<b>1,418</b>
Debt issuance costs and unamortized discounts	(13)
Less: current maturities	(21)
<b>Total Long-term Debt</b>	<b>\$ 1,384</b>

The debt refinancing transactions were as follows:

(in millions)	Amount
Term Loan A due 2026	\$ 265
Term Loan B due 2028	515
Secured Notes due 2029	520
Total new debt excluding revolving credit facility	\$ 1,300
Revolving Credit Facility maturing 2026	\$ 550

\* *subject to a floor of 50 basis points*

Revenue - Disaggregated Revenue (Details) - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	\$ 1,038	\$ 1,041	\$ 3,092	\$ 3,108
<a href="#">Point in time</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	26	23	83	85
<a href="#">Over time</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	1,012	1,018	3,009	3,023
<a href="#">Commercial Industries:</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	509	518	1,538	1,610
<a href="#">Commercial Industries:   Customer experience management</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	152	149	459	474
<a href="#">Commercial Industries:   Business operations solutions</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	139	140	418	426
<a href="#">Commercial Industries:   Commercial healthcare solutions</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	109	106	329	322
<a href="#">Commercial Industries:   Human resource and learning services</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	109	123	332	388
<a href="#">Government Services:</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	349	348	1,005	969
<a href="#">Government Services:   Government healthcare solutions</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	143	153	432	459
<a href="#">Government Services:   Government services solutions</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	206	195	573	510
<a href="#">Transportation:</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	180	175	549	529
<a href="#">Transportation:   Roadway charging &amp; management services</a>				
<a href="#">Disaggregation of Revenue [Line Items]</a>				
<a href="#">Revenue</a>	79	83	237	232

Transportation: | Transit solutions

**Disaggregation of Revenue [Line Items]**

Revenue 60 53 194 181

Transportation: | Curbside management solutions

**Disaggregation of Revenue [Line Items]**

Revenue 22 18 60 54

Transportation: | Public safety solutions

**Disaggregation of Revenue [Line Items]**

Revenue 17 19 52 56

Transportation: | Commercial vehicles

**Disaggregation of Revenue [Line Items]**

Revenue \$ 2 \$ 2 \$ 6 \$ 6

Revenue - Contract Balances (Details) - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020 Dec. 31, 2020
<b><u>Contract Assets (Unearned Income)</u></b>				
<u>Current contract assets</u>	\$ 159		\$ 159	\$ 151
<u>Long-term contract assets</u>	8		8	13
<u>Current unearned income</u>	(111)		(111)	(133)
<u>Long-term unearned income</u>	(39)		(39)	(29)
<u>Net Contract Assets (Unearned Income)</u>	17		17	2
<u>Accounts receivable, net</u>	701		701	\$ 670
<u>Revenue recognized</u>	\$ 11	\$ 20	\$ 99	\$ 84

**Revenue - Remaining  
Performance Obligation  
(Details)  
\$ in Billions**

**Sep. 30,  
2021  
USD (\$)**

**Revenue, Remaining Performance Obligation, Expected Timing of Satisfaction [Line Items]**

Remaining performance obligation

\$ 1.3

Revenue, Remaining Performance Obligation, Expected Timing of Satisfaction, Start Date [Axis]:  
2021-10-01

**Revenue, Remaining Performance Obligation, Expected Timing of Satisfaction [Line Items]**

Remaining performance obligation, percentage

76.00%

Remaining performance obligation, expected timing of satisfaction

2 years

Segment Reporting - Segment Revenue and Segment Profit (Loss) (Details) - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
	<b>Segment Reporting Information [Line Items]</b>			
Revenue	\$ 1,038	\$ 1,041	\$ 3,092	\$ 3,108
Segment Pre-tax Income (Loss)	76	88	210	188
Unallocated costs				
<b>Segment Reporting Information [Line Items]</b>				
Revenue	0	0	0	0
Segment Pre-tax Income (Loss)	(94)	(98)	(259)	(258)
Commercial Industries:				
<b>Segment Reporting Information [Line Items]</b>				
Segment Pre-tax Income (Loss)			93	99
Commercial Industries:   Operating Segments				
<b>Segment Reporting Information [Line Items]</b>				
Revenue	509	518	1,538	1,610
Segment Pre-tax Income (Loss)	29	32		
Government Services:				
<b>Segment Reporting Information [Line Items]</b>				
Segment Pre-tax Income (Loss)			322	282
Government Services:   Operating Segments				
<b>Segment Reporting Information [Line Items]</b>				
Revenue	349	348	1,005	969
Segment Pre-tax Income (Loss)	125	122		
Transportation:				
<b>Segment Reporting Information [Line Items]</b>				
Segment Pre-tax Income (Loss)			54	56
Transportation:   Operating Segments				
<b>Segment Reporting Information [Line Items]</b>				
Revenue	180	175	549	529
Segment Pre-tax Income (Loss)	16	26		
Education   Other				
<b>Segment Reporting Information [Line Items]</b>				
Segment Pre-tax Income (Loss)			0	9
Education   Other   Operating Segments				
<b>Segment Reporting Information [Line Items]</b>				
Revenue	0	0	\$ 0	\$ 0
Segment Pre-tax Income (Loss)	\$ 0	\$ 6		

**Segment Reporting -  
Reconciliation Of Operating  
Profit Loss (Details) - USD  
(\$)  
\$ in Millions**

**3 Months Ended                      9 Months Ended**  
**Sep. 30, 2021 Sep. 30, 2020 Sep. 30, 2021 Sep. 30, 2020**

**Segment Reporting [Abstract]**

<u>Income (Loss) Before Income Taxes</u>	\$ 19	\$ (13)	\$ 29	\$ (128)
--	-------	---------	-------	----------

**Reconciling items:**

<u>Amortization of acquired intangible assets</u>	31	60	103	180
<u>Restructuring and related costs</u>	10	20	31	56
<u>Interest expense</u>	12	14	38	46
<u>(Gain) loss on divestitures and transaction costs</u>	0	8	1	14
<u>Litigation costs</u>	0	0	2	20
<u>Loss on extinguishment of debt</u>	0	0	2	0
<u>Other (income) expenses, net</u>	4	(1)	4	0
<u>Segment Pre-tax Income (Loss)</u>	\$ 76	\$ 88	\$ 210	\$ 188

Restructuring Programs (Details) - USD (\$) \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
<b><u>Restructuring Cost and Reserve [Line Items]</u></b>				
<u>Strategic transformation costs</u>	\$ 1	\$ 2	\$ 3	\$ 6
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			6	21
<u>Provision</u>			32	47
<u>Changes in estimates</u>			(4)	3
<u>Total Net Current Period Charges</u>	9	18	28	50
<u>Charges against reserve and currency</u>			(32)	(61)
<u>Balance at end of period</u>	2	10	2	10
<u>Unallocated costs</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Total Net Current Period Charges</u>	8	15	25	36
<u>Commercial Industries:   Operating Segments</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Total Net Current Period Charges</u>	1	4	3	11
<u>Government Services:   Operating Segments</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Total Net Current Period Charges</u>	0	0	0	1
<u>Transportation:   Operating Segments</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Total Net Current Period Charges</u>	0	(1)	0	2
<u>Severance and Related Costs</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			3	15
<u>Provision</u>			2	13
<u>Changes in estimates</u>			0	1
<u>Total Net Current Period Charges</u>			2	14
<u>Charges against reserve and currency</u>			(4)	(22)
<u>Balance at end of period</u>	1	7	1	7
<u>Termination and Other Costs</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			3	6
<u>Provision</u>			23	19
<u>Changes in estimates</u>			(4)	2
<u>Total Net Current Period Charges</u>			19	21
<u>Charges against reserve and currency</u>			(21)	(24)
<u>Balance at end of period</u>	1	3	1	3
<u>Asset Impairments</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			0	0



<u>Provision</u>			7	15
<u>Changes in estimates</u>			0	0
<u>Total Net Current Period Charges</u>			7	15
<u>Charges against reserve and currency</u>			(7)	(15)
<u>Balance at end of period</u>	0	0	0	0
<u>Data Center Consolidation [Member]   Termination and Other Costs</u>				
<b><u>Restructuring Reserve [Roll Forward]</u></b>				
<u>Provision</u>	\$ 4	\$ 8	\$ 19	\$ 16

Debt - Debt Issuances (Details) - USD (\$)	3 Months Ended		9 Months Ended		Dec. 31, 2020
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020	
<b><u>Debt Instrument [Line Items]</u></b>					
<u>Finance lease obligations</u>	\$ 18,000,000		\$ 18,000,000		\$ 20,000,000
<u>Other loans</u>	5,000,000		5,000,000		4,000,000
<u>Principal debt balance</u>	1,418,000,000		1,418,000,000		1,528,000,000
<u>Debt issuance costs and unamortized discounts</u>	(13,000,000)		(13,000,000)		(18,000,000)
<u>Less: current maturities</u>	(21,000,000)		(21,000,000)		(90,000,000)
<u>Total Long-term Debt</u>	1,384,000,000		1,384,000,000		1,420,000,000
<b><u>Line of Credit Facility [Line Items]</u></b>					
<u>Letters of Credit Outstanding, Amount</u>	10,000,000		10,000,000		
<u>Loss on extinguishment of debt</u>	0	\$ 0	2,000,000	\$ 0	
<u>Revolving Credit Facility</u>					
<b><u>Line of Credit Facility [Line Items]</u></b>					
<u>Line of Credit Facility, Maximum Borrowing Capacity</u>	750,000,000		750,000,000		
<u>Line of Credit Facility, Remaining Borrowing Capacity</u>	740,000,000		740,000,000		
<u>Term loan A due December 2022</u>					
<b><u>Debt Instrument [Line Items]</u></b>					
<u>Long-term debt, gross</u>	585,000,000		585,000,000		654,000,000
<u>Term loan B due December 2023</u>					
<b><u>Debt Instrument [Line Items]</u></b>					
<u>Long-term debt, gross</u>	810,000,000		810,000,000		816,000,000
<u>Senior notes due 2024</u>					
<b><u>Debt Instrument [Line Items]</u></b>					
<u>Long-term debt, gross</u>	\$ 0		\$ 0		\$ 34,000,000

**Financial Instruments -  
Foreign Exchange Risk  
Management (Details) -  
Designated as Hedging  
Instrument [Member] - USD  
(\$)  
\$ in Millions**

**Derivative Instruments and Hedging Activities Disclosures [Line Items]**

	<b>Sep. 30, 2021</b>	<b>Dec. 31, 2020</b>
<u>Derivative, Notional Amount</u>	\$ 147	\$ 180
<u>Average Maturity of Foreign Exchange Hedging Contracts - within Three Months</u>	72.00%	
<u>Average Maturity of Foreign Exchange Hedging Contracts - within Three and Six Months</u>	11.00%	
<u>Average Maturity of Foreign Exchange Hedging Contracts - within Six and Twelve Months</u>	13.00%	
<u>Average Maturity of Foreign Exchange Hedging Contracts - greater than twelve months</u>	4.00%	

**Fair Value of Financial  
 Assets and Liabilities -  
 Recurring (Details) -  
 Significant Other  
 Observable Inputs (Level 2)    Sep. 30, 2021 Dec. 31, 2020  
 [Member] - Fair Value,  
 Recurring [Member] - USD  
 (\$)  
 \$ in Millions**

**Assets:**

<u>Total Assets</u>	\$ 1	\$ 2
---------------------	------	------

**Liabilities:**

<u>Total Liabilities</u>	2	0
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Foreign exchange contract - forward

**Assets:**

<u>Foreign exchange contracts</u>	1	2
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**Liabilities:**

<u>Foreign derivative contracts</u>	\$ 2	\$ 0
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**Fair Value of Financial  
Assets and Liabilities -  
Nonrecurring (Details) - Fair  
Value, Nonrecurring  
[Member] - USD (\$)  
\$ in Millions**

**Sep. 30,  
2021**

**Dec. 31,  
2020**

Carrying Amount

Fair Value, Balance Sheet Grouping, Financial Statement Captions [Line  
Items]

Long-term debt

\$ 1,384

\$ 1,420

Fair Value

Fair Value, Balance Sheet Grouping, Financial Statement Captions [Line  
Items]

Long-term debt

\$ 1,372

\$ 1,378

**Employee Benefit Plans**  
**(Details) - USD (\$)**  
**\$ in Millions**

**3 Months Ended**                      **9 Months Ended**  
**Sep. 30, 2021** **Sep. 30, 2020** **Sep. 30, 2021** **Sep. 30, 2020**

[Pension Plan](#)

[Defined Contribution Plan Disclosure \[Line Items\]](#)

[Defined contribution plans](#)

\$ 6	\$ 1	\$ 16	\$ 2
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<b>Accumulated Other Comprehensive Loss (AOCL) (Details) - USD (\$) \$ in Millions</b>	<b>3 Months Ended</b>		<b>9 Months Ended</b>	
	<b>Sep. 30, 2021</b>	<b>Sep. 30, 2020</b>	<b>Sep. 30, 2021</b>	<b>Sep. 30, 2020</b>
<b><u>Changes in Accumulated Other Comprehensive Loss (AOCL) [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			\$ (398)	\$ (407)
<u>Other comprehensive income (loss), net</u>	[1] \$ (16)	\$ 12	(25)	(14)
<u>Balance at end of period</u>	(423)	(421)	(423)	(421)
<u>Currency Translation Adjustments</u>				
<b><u>Changes in Accumulated Other Comprehensive Loss (AOCL) [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			(400)	(408)
<u>Other comprehensive income (loss), net</u>			(23)	(15)
<u>Balance at end of period</u>	(423)	(423)	(423)	(423)
<u>Gains (Losses) on Cash Flow Hedges</u>				
<b><u>Changes in Accumulated Other Comprehensive Loss (AOCL) [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			3	3
<u>Other comprehensive income (loss), net</u>			(1)	0
<u>Balance at end of period</u>	2	3	2	3
<u>Defined Benefit Pension Items</u>				
<b><u>Changes in Accumulated Other Comprehensive Loss (AOCL) [Roll Forward]</u></b>				
<u>Balance at beginning of period</u>			(1)	(2)
<u>Other comprehensive income (loss), net</u>			(1)	1
<u>Balance at end of period</u>	\$ (2)	\$ (1)	\$ (2)	\$ (1)

[1] All amounts are net of tax. Tax effects were immaterial.

Contingencies and Litigation - Litigation Against the Company (Details) \$ in Millions	6 Months Ended			
	Jun. 30, 2021 USD (\$)	Jun. 30, 2019 USD (\$) claim	Sep. 30, 2021 USD (\$)	Dec. 31, 2018 USD (\$)
<u>Surety Bond</u>				
<b><u>Loss Contingencies [Line Items]</u></b>				
<u>Maximum exposure, undiscounted</u>			\$ 553	
<u>Letters of Credit Issued to Secured Contractual Obligations</u>				
<b><u>Loss Contingencies [Line Items]</u></b>				
<u>Maximum exposure, undiscounted</u>			\$ 94	
<u>Conduent Business Services, LLC v. Cognizant Business Service, LLC   Pending Litigation</u>				
<b><u>Loss Contingencies [Line Items]</u></b>				
<u>Loss contingency, damages sought</u>		\$ 47		
<u>Gain contingency, damages sought</u>				\$ 150
<u>Number of counterclaims for breach of contract   claim</u>		2		
<u>Loss contingency, damages sought, termination fees</u>		\$ 25		
<u>Loss contingency, additional damages sought</u>	\$ 89			
<u>Skyview Capital LLC and Continuum Global Solutions, LLC v. Conduent Business Services, LLC [Member]   Pending Litigation</u>				
<b><u>Loss Contingencies [Line Items]</u></b>				
<u>Loss contingency, damages sought</u>	\$ 23			



**Preferred Stock (Details) -  
USD (\$)  
\$ / shares in Units, \$ in  
Millions**

**6 Months Ended**

**Jun. 30, 2017    Dec. 31, 2016**

**Temporary Equity [Line Items]**

<u>Preferred Stock, Shares Issued (in shares)</u>		120,000
<u>Preferred Stock, Liquidation Preference, Value</u>		\$ 120.0
<u>Preferred Stock, Value, Issued</u>		\$ 142.0
<u>Preferred Stock, Dividend Rate, Percentage</u>	8.00%	
<u>Preferred stock annual dividends</u>	\$ 9.6	
<u>Total shares available for issuance (in shares)</u>		5,393,000
<u>Preferred Stock Initial Conversion Price per Share (in USD per share)</u>	\$ 22.25	
<u>Common Stock</u>		
<b><u>Temporary Equity [Line Items]</u></b>		
<u>Shares issued upon conversion (in shares)</u>		44.9438

Earnings (Loss) Per Share (Details) - USD (\$) \$ / shares in Units, shares in Thousands, \$ in Millions	3 Months Ended		9 Months Ended	
	Sep. 30, 2021	Sep. 30, 2020	Sep. 30, 2021	Sep. 30, 2020
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share [Line Items]</u></b>				
Net Income (Loss)	\$ 11	\$ (7)	\$ 12	\$ (107)
Dividend - Preferred Stock	(2)	(2)	(7)	(7)
Adjusted Net Income (Loss) Available to Common Shareholders	\$ 9	\$ (9)	\$ 5	\$ (114)
Weighted Average Number of Shares Outstanding, Diluted (in shares)	219,817	209,244	219,677	209,958
Income (Loss) from Continuing Operations, Per Basic Share (in USD per share)	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
Income (Loss) from Continuing Operations, Per Diluted Share (in USD per share)	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share, Amount (in shares)</u></b>	8,999	21,589	7,622	21,589
<b><u>Restricted Stock and Performance Shares [Member]</u></b>				
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share [Line Items]</u></b>				
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share, Amount (in shares)</u></b>	3,606	16,196	2,229	16,196
<b><u>Convertible Preferred Stock [Member]</u></b>				
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share [Line Items]</u></b>				
<b><u>Antidilutive Securities Excluded from Computation of Earnings Per Share, Amount (in shares)</u></b>		5,393	5,393	5,393

**Earnings per Share - Basic**  
**Earnings per share**  
**reconciliation (Details) -**  
**USD (\$)**  
**\$ / shares in Units, shares in**  
**Thousands, \$ in Millions**

**3 Months Ended 9 Months Ended**

**Sep. 30, Sep. 30, Sep. 30, Sep. 30,**  
**2021 2020 2021 2020**

**Earnings Per Share, Basic, by Common Class, Including Two Class**  
**Method [Line Items]**

<u>Income (Loss) from Continuing Operations, Per Basic Share (in USD per share)</u>	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
<u>Net Income (Loss)</u>	\$ 11	\$ (7)	\$ 12	\$ (107)
<u>Dividend - Preferred Stock</u>	(2)	(2)	(7)	(7)
<u>Adjusted Net Income (Loss) Available to Common Shareholders</u>	\$ 9	\$ (9)	\$ 5	\$ (114)
<u>Weighted Average Number of Shares Outstanding, Basic (in shares)</u>	212,633	209,244	212,438	209,958
<u>Restricted Stock and Performance Shares [Member]</u>				

**Earnings Per Share, Basic, by Common Class, Including Two Class**  
**Method [Line Items]**

<u>Incremental Common Shares Attributable to Dilutive Effect of Share-based Payment Arrangements (in shares)</u>	7,184	0	7,239	0
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**Earnings per Share - Diluted**  
**Earnings per share**  
**reconciliation (Details) -**  
**USD (\$)**  
**\$ / shares in Units, shares in**  
**Thousands, \$ in Millions**

**3 Months Ended 9 Months Ended**  
**Sep. 30, Sep. 30, Sep. 30, Sep. 30,**  
**2021 2020 2021 2020**

**Earnings Per Share, Diluted, by Common Class, Including Two Class**  
**Method [Line Items]**

<u>Income (Loss) from Continuing Operations, Per Diluted Share (in USD per share)</u>	\$ 0.04	\$ (0.04)	\$ 0.02	\$ (0.54)
<u>Net Income (Loss)</u>	\$ 11	\$ (7)	\$ 12	\$ (107)
<u>Dividend - Preferred Stock</u>	(2)	(2)	(7)	(7)
<u>Adjusted Net Income (Loss) Available to Common Shareholders</u>	\$ 9	\$ (9)	\$ 5	\$ (114)
<u>Weighted Average Number of Shares Outstanding, Diluted (in shares)</u>	219,817	209,244	219,677	209,958
<u>Restricted Stock and Performance Shares [Member]</u>				

**Earnings Per Share, Diluted, by Common Class, Including Two Class**  
**Method [Line Items]**

<u>Incremental Common Shares Attributable to Dilutive Effect of Share-based Payment Arrangements (in shares)</u>	7,184	0	7,239	0
--	-------	---	-------	---

**Supplementary Financial  
Information - Other Current  
Assets (Details) - USD (\$)  
\$ in Millions**

**Sep. 30, 2021 Dec. 31, 2020**

**Supplementary Financial Information [Abstract]**

<u>Prepaid expenses</u>	\$ 96	\$ 73
<u>Income taxes receivable</u>	42	48
<u>Value-added tax (VAT) receivable</u>	16	21
<u>Restricted cash</u>	6	8
<u>Current portion of capitalized cloud computing implementation costs, net</u>	10	8
<u>Other</u>	87	148
<u>Other current assets</u>	\$ 257	\$ 306

**Supplementary Financial  
Information - Other Current  
Liabilities (Details) - USD (\$)  
\$ in Millions**

**Sep. 30, 2021 Dec. 31, 2020**

**Condensed Financial Information Disclosure [Abstract]**

<u>Accrued liabilities</u>	\$ 232	\$ 229
<u>Litigation related accruals</u>	64	73
<u>Current operating lease liabilities</u>	71	81
<u>Restructuring liabilities</u>	2	1
<u>Income tax payable</u>	18	16
<u>Other taxes payable</u>	14	16
<u>Other</u>	33	34
<u>Other current liabilities</u>	\$ 434	\$ 450

**Supplementary Financial  
Information - Other Long-  
Term Assets (Details) - USD  
(\$)**

**Sep. 30, 2021 Dec. 31, 2020**

**\$ in Millions**

**Condensed Financial Information Disclosure [Abstract]**

<u>Internal use software, net</u>	\$ 177	\$ 163
<u>Deferred contract costs, net</u>	73	76
<u>Product software, net</u>	90	72
<u>Cloud computing implementation costs, net</u>	31	33
<u>Other</u>	104	69
<u>Other long-term assets</u>	\$ 475	\$ 413

**Supplementary Financial  
Information - Other Long-  
Term Liabilities (Details) -  
USD (\$)**

**Sep. 30, 2021 Dec. 31, 2020**

**\$ in Millions**

**Condensed Financial Information Disclosure [Abstract]**

<u>Deferred payroll tax related to the CARES Act</u>	\$ 24	\$ 24
<u>Income tax liabilities</u>	16	15
<u>Unearned income</u>	39	29
<u>Restructuring liabilities</u>	0	5
<u>Other</u>	35	35
<u>Other long-term liabilities</u>	\$ 114	\$ 108



<b>Related Party Disclosures</b> <b>(Details) - USD (\$)</b> <b>\$ in Millions</b>	<b>3 Months Ended</b>		<b>9 Months Ended</b>	
	<b>Sep. 30, 2021</b>	<b>Sep. 30, 2020</b>	<b>Sep. 30, 2021</b>	<b>Sep. 30, 2020</b>
<u><a href="#">Related Party Transactions [Abstract]</a></u>				
<u>Revenue from related parties</u>	\$ 3	\$ 6	\$ 12	\$ 19
<u>Purchases from related parties</u>	\$ 6	\$ 8	\$ 22	\$ 22

**Goodwill (Details) - USD (\$) 9 Months Ended**  
**\$ in Millions**                      **Sep. 30, 2021**   **Dec. 31, 2020**

**Goodwill [Line Items]**

<u>Goodwill</u>	\$ 1,506	\$ 1,528
<u>Foreign currency translation</u>	(22)	
<u>Gross goodwill</u>	4,393	
<u>Accumulated impairment</u>	(2,887)	

**Commercial Industries:**

**Goodwill [Line Items]**

<u>Goodwill</u>	826	837
<u>Foreign currency translation</u>	(11)	
<u>Gross goodwill</u>	2,379	
<u>Accumulated impairment</u>	(1,553)	

**Government Services:**

**Goodwill [Line Items]**

<u>Goodwill</u>	619	623
<u>Foreign currency translation</u>	(4)	
<u>Gross goodwill</u>	1,373	
<u>Accumulated impairment</u>	(754)	

**Transportation:**

**Goodwill [Line Items]**

<u>Goodwill</u>	61	\$ 68
<u>Foreign currency translation</u>	(7)	
<u>Gross goodwill</u>	641	
<u>Accumulated impairment</u>	\$ (580)	

<b>Subsequent Event (Details) - USD (\$) \$ in Millions</b>	<b>Oct. 15, 2021</b>	<b>Sep. 30, 2021</b>	<b>Dec. 31, 2020</b>
<a href="#">Term loan A due December 2022</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Long-term debt, gross</a>		\$ 585	\$ 654
<a href="#">Term loan B due December 2023</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Long-term debt, gross</a>		\$ 810	\$ 816
<a href="#">Subsequent Event</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Long-term debt, gross</a>	\$ 1,300		
<a href="#">Subsequent Event   Revolving Credit Facility</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Revolving Credit Facility maturing 2026</a>	\$ 550		
<a href="#">Interest Rate</a>	6.00%		
<a href="#">Amounts borrowed upon refinancing</a>	\$ 100		
<a href="#">Subsequent Event   Revolving Credit Facility   Minimum   London Interbank Offered Rate (LIBOR)</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Interest rate, plus LIBOR spread</a>	1.75%		
<a href="#">Subsequent Event   Revolving Credit Facility   Maximum   London Interbank Offered Rate (LIBOR)</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Interest rate, plus LIBOR spread</a>	2.75%		
<a href="#">Subsequent Event   Term Loan A due 2026</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Long-term debt, gross</a>	\$ 265		
<a href="#">Subsequent Event   Term Loan A due 2026   Minimum   London Interbank Offered Rate (LIBOR)</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Interest rate, plus LIBOR spread</a>	1.75%		
<a href="#">Subsequent Event   Term Loan A due 2026   Maximum   London Interbank Offered Rate (LIBOR)</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Interest rate, plus LIBOR spread</a>	2.75%		
<a href="#">Subsequent Event   Term Loan B due 2028</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Long-term debt, gross</a>	\$ 515		
<a href="#">Subsequent Event   Term Loan B due 2028   London Interbank Offered Rate (LIBOR)</a>			
<b><a href="#">Subsequent Event [Line Items]</a></b>			
<a href="#">Interest rate, plus LIBOR spread</a>	4.25%		
<a href="#">Subsequent Event   Secured Notes due 2029</a>			

**Subsequent Event [Line Items]**

Long-term debt, gross

\$ 520

Subsequent Event | Term loan A due December 2022

**Subsequent Event [Line Items]**

Repayment of debt

587

Subsequent Event | Term loan B due December 2023

**Subsequent Event [Line Items]**

Repayment of debt

\$ 810





























1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the tools used for data collection.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend in the relationship between the variables being studied.

4. The fourth part of the document discusses the implications of the findings. It highlights the potential applications of the research in various fields and the need for further investigation in this area.

5. The fifth part of the document concludes the study and provides a summary of the key findings. It also includes a list of references and a bibliography of the sources used in the research.

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4. The fourth part of the document discusses the implications of the study and provides recommendations for future research. It highlights the need for further investigation into the effectiveness of the different methods and techniques used.

5. The fifth part of the document provides a conclusion and a summary of the key findings. It emphasizes the importance of maintaining accurate records and the need for transparency and accountability in financial reporting.

