FORM 8-K

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Accelerate Diagnostics, Inc

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

FORM 8-K

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

Date of Report (Date of earliest event reported)	**August 8, 2024**

Accelerate Diagnostics, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-31822	**84-1072256**
(Commission File Number)	(IRS Employer Identification No.)
3950 South Country Club Road, Suite 470, Tucson, Arizona	**85714**
(Address of principal executive offices)	(Zip Code)

(520) 365-3100

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.001 par value per share	**AXDX**	**The Nasdaq Stock Market LLC (The Nasdaq Capital Market)**

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Note Purchase Agreement

On August 8, 2024, Accelerate Diagnostics, Inc. (the "Company") entered into a Note Purchase Agreement (the "Note Purchase Agreement"), dated August 8, 2024, with certain investors named therein. Pursuant to the Note Purchase Agreement, the certain investors purchased $15 million in aggregate principal amount of the Company's 16.00% Super-Priority Senior Secured PIK Notes due 2025 (the "Notes") from the Company. The sale of the Notes pursuant to the Note Purchase Agreement is exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(a)(2) of the Securities Act.

A copy of the Note Purchase Agreement is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference, and the foregoing description of the Note Purchase Agreement is qualified in its entirety by reference thereto.

Indenture

The Notes were issued under an indenture (the "Indenture"), dated as of August 8, 2024, by and between the Company and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the "Trustee") and collateral agent (in such capacity, the "Collateral Agent"). The Indenture provides that the Notes will be secured by a super-priority security interest in the same collateral that secures the Company's outstanding 5.00% senior secured convertible notes due 2026 (the "Convertible Notes").

The Notes will mature on December 31, 2025, and will bear interest at a rate of 16.00% per annum, payable in kind. Interest on the Notes will be payable by the Company quarterly in arrears on the last business day of each March, June, September and December, beginning on September 30, 2024.

The Indenture contains customary events of default, including, but not limited to, non-payment of principal or interest, breach of certain covenants in the Indenture, defaults under or failure to pay certain other indebtedness and certain events of bankruptcy, insolvency, and reorganization. If an event of default (other than certain events of bankruptcy, insolvency or reorganization involving the Company) occurs and is continuing, the Trustee, by notice to the Company, or the holders of the Notes representing at least a majority in aggregate principal amount of the outstanding Notes, by notice to the Company and the Trustee, may declare 100% of the principal of, the premium (including the Exit Premium (as defined below)), and all accrued and unpaid interest on, all of the then outstanding Notes to be due and payable immediately. Upon the occurrence of certain events of bankruptcy, insolvency or reorganization involving the Company, 100% of the principal of, the premium (including the Exit Premium), and all accrued and unpaid interest on, all of the then outstanding Notes will automatically become immediately due and payable. Upon the occurrence of a change of control, the Company will be required to make an offer to repurchase all or any portion of the outstanding Notes at a price in cash equal to 100% of the aggregate principal amount of the Notes repurchased, plus the premium (including the Exit Premium), and all accrued and unpaid interest to, but excluding, the date or repurchase. Upon the occurrence of any repayment (including in connection with a change of control or an asset sale) or redemption or acceleration upon any event of default, the Company is required to pay the investors a fee equal to a certain percentage of the aggregate principal amount of the Notes then outstanding plus accrued and unpaid interest thereon, which fee shall be equal to 30.00% if any such event occurs on or prior to June 30, 2025 and equal to 42.50% if any such event occurs on July 1, 2025 and thereafter (the "Exit Premium").

The Indenture also contains various affirmative, negative and financial covenants that, among other things, may restrict the ability of the Company and its subsidiaries to incur additional indebtedness, create certain liens, merge or consolidate with another entity, pay dividends or repurchase stock, and sell all or substantially all of their assets.

Copies of the Indenture and Form of Note are filed with this Current Report on Form 8-K as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference, and the foregoing descriptions of the Indenture and Form of Note are qualified in their entirety by reference thereto.

Intercreditor Agreement

The Company entered into an intercreditor agreement (the "Intercreditor Agreement") with the Collateral Agent and with the collateral agent for the Company's Convertible Notes, pursuant to which the collateral agent for the Convertible Notes subordinated the security interest of the Convertible Notes to the security interest of the Notes.

A copy of the Intercreditor Agreement is filed with this Current Report on Form 8-K as Exhibit 10.2 and is incorporated herein by reference, and the foregoing description of the Intercreditor Agreement is qualified in its entirety by reference thereto.

Security Agreement and IP Security Agreements

The Company entered into a Security Agreement (the "Security Agreement") with the Collateral Agent. Pursuant to the Security Agreement, the Company granted the Collateral Agent a security interest in certain of its assets, including but not limited to certain accounts, equipment, fixtures and intellectual property, in order to secure the payment and performance of all of the Obligations, as defined in the Indenture.

In connection with the Security Agreement, the Company and Collateral Agent also entered into a Patent Security Agreement (the "Patent Security Agreement") and a Trademark Security Agreement (the "Trademark Security Agreement and, together with the Patent Security Agreement, the "IP Security Agreements"). Pursuant to the IP Security Agreements, the Company granted the Collateral Agent a security interest in the Patent Collateral and Trademark Collateral, as defined therein.

Copies of the form of Security Agreement, form of Patent Security Agreement and form of Trademark Security Agreement are filed with this Current Report on Form 8-K as Exhibit 10.3, 10.4 and 10.5, respectively, and are incorporated herein by reference, and the foregoing descriptions of the Security Agreement, Patent Security Agreement and Trademark Security Agreement are qualified in their entirety by reference thereto.

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

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Company's direct financial obligations under the Notes is incorporated by reference herein to the extent required.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture, dated August 8, 2024, between the Company and U.S. Bank Trust Company, National Association.
4.2	Form of Note (included as Exhibit 1 to Exhibit 4.1).
10.1*	Note Purchase Agreement, date August 8, 2024, between the Company and certain investors named therein.
10.2	Form of Intercreditor Agreement, dated August 8, 2024, among the Company, as issuer, U.S. Bank Trust Company, National Association, as Collateral Agent for the Notes and U.S. Bank Trust Company, National Association, as collateral agent for the Convertible Notes.
10.3*	Form of Security Agreement, dated August 8, 2024, among the Company, as issuer, subsidiaries of the Company, as guarantors, and U.S. Bank Trust Company, National Association, as Collateral Agent.

10.4	Form of Patent Security Agreement, dated August 8, 2024, by the Company, as pledgor, in favor of U.S. Bank Trust Company, National Association, as collateral agent (included as Exhibit 3 to Exhibit 10.3).
10.5	Form of Trademark Security Agreement, dated August 8, 2024, by the Company, as pledgor, in favor of U.S. Bank Trust Company, National Association, as collateral agent (included as Exhibit 4 to Exhibit 10.3).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Certain exhibits, schedules and annexes to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted exhibits, schedules or annexes to the SEC upon its request.

SIGNATURES

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

ACCELERATE DIAGNOSTICS, INC.
(Registrant)

Date: August 8, 2024

/s/ David Patience
David Patience
Chief Financial Officer

Exhibit 4.1

Execution Version

ACCELERATE DIAGNOSTICS, INC.
as Issuer,

THE GUARANTORS NAMED HEREIN

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Trustee and as Notes Collateral Agent

INDENTURE

Dated as of August 8, 2024

$15,000,000

Super-Priority Senior Secured PIK Notes Due 2025

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Exhibit 1 to Rule 144A / Regulation S — Form of Initial Note

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Exhibit C — Form of Net Short Representation

INDENTURE, dated as of August 8, 2024 (this "*Indenture*"), by and among ACCELERATE DIAGNOSTICS, INC., a Delaware corporation (the "*Issuer*"), the Subsidiaries of Issuer from time to time party hereto as Guarantors (as defined herein), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee and as Notes Collateral Agent (each as defined herein).

RECITALS OF THE ISSUER

The Issuer has duly authorized the creation of an issue of Super-Priority Senior Secured PIK Notes Due 2025 issued on the date hereof (the "*Initial Notes*"; together with any other notes authenticated and delivered under this Indenture, the "*Notes*") and to provide therefor the Issuer has duly authorized the execution and delivery of this Indenture.

All things necessary have been done to make the Notes, when executed by the Issuer and authenticated and delivered hereunder and duly issued by the Issuer, the valid and legally binding obligations of the Issuer and to make this Indenture a valid and legally binding agreement of the Issuer and the Guarantors, in accordance with their and its terms.

Each of the parties hereto is entering into this Indenture for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of (i) the Initial Notes, (ii) any PIK Notes (as defined herein), and (iii) any Additional Notes (as defined herein) that may be issued from time to time under this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and ratable benefit of all Holders, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01. Rules of Construction.

(a) For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article One have the meanings assigned to them in this Article One, and words in the singular include the plural and words in the plural include the singular;

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP (as herein defined);

(3) the words "herein," "hereof," and "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(4) all references to Articles, Sections, Exhibits and Appendices shall be construed to refer to Articles and Sections of, and Exhibits and Appendices to, this Indenture;

(5) "or" is not exclusive;

(6) "including" means including without limitation;

(7) all references to the date the Notes were originally issued shall refer to the Issue Date; and

(8) references to "principal amount" of the Notes includes any increase in the principal amount of outstanding Notes (including PIK Notes) as a result of a PIK Payment.

(b) Notwithstanding anything to the contrary, the Trustee shall have no responsibility, nor shall it have any liability to the Issuer, any Holder or any third party, for calculating any basket, ratio or other financial metrics under this Indenture, determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or determining the Issuer's compliance with any other condition precedent to any action or transaction.

(c) For purposes of determining any calculation or measure as of any Applicable Calculation Date or date of determination (including, without limitation, Consolidated EBITDA, Consolidated Interest Expense, Consolidated Net Income and Consolidated Total Debt Ratio) under this Indenture, the U.S. dollar equivalent amount of any amount denominated in a foreign currency shall be calculated, to the extent not already reflected in U.S. dollars in the relevant financial statements (which may be internal), based on the relevant currency exchange rate in effect as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date.

(d) Notwithstanding anything in this Indenture to the contrary, so long as an action was taken (or not taken) in reliance upon a basket, ratio or financial metric under this Indenture that was calculated or determined in good faith by a responsible financial or

accounting officer of the Issuer based upon financial information available to such officer at such time and such action (or inaction) was permitted under this Indenture at the time of such calculation or determination, any subsequent restatement, modification or adjustments made to such financial information (including any restatement, modification or adjustment that would have caused such basket or ratio to be exceeded as a result of such action or inaction) shall not result in any Default or Event of Default under this Indenture.

SECTION 1.02. Definitions.

"*Acceptable Commitment*" has the meaning specified in Section 10.17(b) of this Indenture.

"*Accounting Change*" has the meaning specified in the definition of GAAP.

"*Acquired Indebtedness*" means, with respect to any specified Person,

(1) 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 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

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

"*Act*," when used with respect to any Holder, has the meaning specified in Section 1.05(a) of this Indenture.

"*Action*," when used with respect to the Notes Collateral Agent, has the meaning specified in Section 14.08(w) of this Indenture.

"*Additional Notes*" means any Notes issued by the Issuer pursuant to Section 3.13(a).

"*Adjusted Net Assets*" has the meaning specified in Section 12.05 of this Indenture.

"*Advance Offer*" has the meaning specified in Section 10.17(c) of this Indenture.

"*Advance Portion*" has the meaning specified in Section 10.17(c) of this Indenture.

"*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. None of the holders of Notes shall be deemed Affiliates of the Company by virtue of their ownership of Notes or the 5.00% Senior Secured Convertible Notes due 2026.

"*Affiliate Transaction*" has the meaning specified in Section 10.13(a) of this Indenture.

"*Agent*" means any note registrar, transfer agent, co-registrar, paying agent, notes collateral agent, authentication agent, or other agent appointed in accordance with this Indenture to perform any function that this Indenture authorized such agent to perform.

"*Alternate Offer*" has the meaning specified in Section 10.16(a) of this Indenture.

"*Ancillary Fees*" has the meaning specified in Section 9.02(a)(17) of this Indenture.

"*Appendix*" has the meaning specified in Section 2.01 of this Indenture.

"*Applicable Calculation Date*" means the applicable date of calculation for:

(1) the Consolidated Total Debt Ratio; or

(2) the Consolidated EBITDA.

"*Applicable Measurement Period*" means the most recently completed four consecutive fiscal quarters of the Issuer immediately preceding the Applicable Calculation Date for which internal financial statements are available.

"*Approved Commercial Bank*" means a commercial bank with a consolidated combined capital and surplus of at least $5.0 million.

"*Asset Sale*" means:

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

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with the covenant described under Section 10.11), whether in a single transaction or a series of related transactions;

in each case, other than:

(A) any disposition of cash, Cash Equivalents or Investment Grade Securities or obsolete, damaged, unnecessary, unsuitable or worn out property or equipment or other assets in the ordinary course of business and consistent with past practice or any disposition of inventory, immaterial assets or goods (or other assets), property or equipment held for sale or no longer used or useful, or economically practicable to maintain, in the conduct of the business of the Issuer and its Subsidiaries;

(B) the disposition of all or substantially all of the assets of the Issuer or any Restricted Subsidiary in a manner permitted pursuant to Section 8.01 or any disposition that constitutes a Change of Control pursuant to this Indenture;

(C) any disposition, issuance or sale in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 10.10 or any Permitted Investment;

(D) any disposition of property or assets, or issuance of securities by a Restricted Subsidiary, to the Issuer or by the Issuer or a Restricted Subsidiary to another Restricted Subsidiary, in each case other than as prohibited by the definition of Permitted Liens or Section 10.18; *provided* that no disposition of property or assets by the Issuer or Guarantor to a Subsidiary that is not a Guarantor shall be permitted;

(E) the lease, assignment, sub-lease, license or sub-license of any real or personal property (other than Intellectual Property) in the ordinary course of business and consistent with past practice;

(F) foreclosures, condemnation, expropriation, forced dispositions, eminent domain or any similar action (whether by deed of condemnation or otherwise) 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;

(G) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business and consistent with past practice;

(H) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business and consistent with past practice or the

conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection or compromise thereof;

(I) the non-exclusive licensing, sub-licensing or cross-licensing of Intellectual Property or other general intangibles in the ordinary course of business and consistent with past practice;

(J) the unwinding of any Hedging Obligations or Cash Management Obligations;

(K) 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 as set forth in joint venture arrangements and similar binding arrangements;

(L) the lapse, abandonment or invalidation of Intellectual Property rights, which in the reasonable determination of the Board of the Issuer or the senior management thereof are not material to the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole or are no longer used or useful or economically practicable or commercially reasonable to maintain;

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

(N) the disposition of any assets (including Equity Interests) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Issuer to consummate any acquisition permitted under this Indenture; and

(O) any disposition of property or assets of a Foreign Subsidiary the Net Proceeds of which the Issuer has determined in good faith that the repatriation of such Net Proceeds (i) is prohibited or subject to limitations under applicable law, orders, decrees or determinations of any arbitrator, court or Governmental Authority or (ii) would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation); *provided* that when the Issuer determines in good faith that repatriation of any of such Net Proceeds (x) is no longer prohibited or subject to limitations under such applicable law, orders, decrees or determinations of any arbitrator, court or Governmental Authority, or (y) would no longer have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation), such amount at such time shall be considered the Net Proceeds in respect of an Asset Sale.

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Sale and would also be a permitted Restricted Payment or Permitted Investment, the Issuer, in its sole discretion, shall 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.

"*Asset Sale Offer*" has the meaning specified in Section 10.17(c) of this Indenture.

"*Asset Sale Proceeds Application Period*" has the meaning specified in Section 10.17(b) of this Indenture.

"*Authenticating Agent*" has the meaning specified in Section 6.12(a) of this Indenture.

"*Bankruptcy Code*" means Title 11 of the United States Code, as amended.

"*Bankruptcy Law*" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"*Board*" with respect to a Person means the board of directors (or similar body) of such Person or any committee thereof duly authorized to act on behalf of such board of directors (or similar body).

"*Board Resolution*" means a duly adopted resolution of the Board or any committee of such Board.

"*Business Day*" means each day that is not a Legal Holiday.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) 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 Lease Obligation*" means an obligation that is required to be accounted for as a financing 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 lease 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.

"*Cash Equivalents*" means:

(1) U.S. dollars;

(2) (A) Canadian dollars, euros, pounds sterling or any national currency of any participating member state of the EMU; or

(B) other currencies held by the Issuer and the Restricted Subsidiaries from time to time in the ordinary course of business and consistent with past practice;

(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 the U.S. government with average maturities of 24 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with average maturities of one year or less from the date of acquisition, demand deposits, bankers' acceptances with average maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $100.0 million (or the foreign currency equivalent thereof);

(5) repurchase obligations for underlying securities of the types described in clauses (3), (4), and (10) of this definition entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time, neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and variable and fixed rate notes issued by any financial institution meting the qualifications specified in clause (4) above, in each case with average maturities of 36 months after the date of creation thereof;

(7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency);

(8) investment funds investing 90% of their assets in securities of the types described in clauses (1) through (7) above and (9) through (12) below;

(9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having average maturities of not more than 36 months from the date of acquisition thereof;

(10) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case (other than in the case of such securities issued or guaranteed by any participating member state of the EMU) having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) with average maturities of 36 months or less from the date of acquisition;

(11) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) with average maturities of 36 months or less from the date of acquisition;

(12) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated A (or the equivalent thereof) or better by S&P or A2 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency);

(13) in the case of Investments by any Foreign Subsidiary of the Issuer, Investments for short-term cash management purposes of comparable tenor and credit quality to those described in the foregoing clauses (1) through (12) customarily utilized in countries in which such Foreign Subsidiary operates;

(14) Investments, classified in accordance with GAAP as current assets, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions meeting the qualifications specified in clause (4) above, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (1) through (13) of this definition; and

(15) in the case of a Subsidiary incorporated, organized or formed outside the United States, other short-term investments that are analogous to the foregoing, are of comparable credit quality and are customarily used by companies in the jurisdiction of such Subsidiary for cash management purposes.

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 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.

"*Cash Management Obligations*" means (1) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds, (2) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements, and (3) obligations in respect of any other services related, ancillary or complementary to the foregoing (including any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds).

"*CERCLA*" has the meaning specified in Section 14.08(r) of this Indenture.

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

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than a Permitted Holder;

(2) the consummation of any transaction the result of which is that any Person other than one or more Permitted Holders is or 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 or transfer of assets, as the case may be; *provided* that (x) so long as such surviving or transferee Person is a Subsidiary of a Permitted Parent, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such transferee Person unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Permitted Parent and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in the calculation of any Voting Stock of which any such Person first referred to above in this clause (1) is the beneficial owner;

(3) the Issuer 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 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, or any successor provision), 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 50% or more of the total voting power of the Voting Stock of the Issuer; *provided* that any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in the calculation of any Voting Stock of which any such Person that is not a Permitted Holder is the beneficial owner; or

(4) the adoption by the stockholders of the Company of a plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock 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 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 the Issuer 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, and (iii) a Person or group shall not be deemed to beneficially own the Voting Stock of a Person (the "*Subject Person*") held by a parent of such Subject Person 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 having a majority of the aggregate votes on the Board of such parent.

"*Change of Control Offer*" has the meaning specified in Section 10.16(a) of this Indenture.

"*Change of Control Payment*" has the meaning specified in Section 10.16(a) of this Indenture.

"*Change of Control Payment Date*" has the meaning specified in Section 10.16(a)(2) of this Indenture.

"*Code*" means the Internal Revenue Code of 1986, as amended, or any successor thereto.

"*Collateral*" means collectively, all property of whatever kind and nature, whether now existing or hereafter acquired, pledged or purported to be pledged as collateral or otherwise subject to a security interest or purported to be subject to a security interest under any Security Document, excluding in all events Excluded Assets.

"*consolidated*" or "*Consolidated*" means, with respect to any Person, such Person on a consolidated basis in accordance with GAAP.

"*Consolidated EBITDA*" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis, *plus:*

(1) without duplication and to the extent already deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period

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

(B) Consolidated Interest Expense; *plus*

(C) depreciation; *plus*

(D) amortization (including amortization of deferred fees and accretion of original issue discount); *plus*

(E) all other noncash items subtracted in determining Consolidated Net Income (including any noncash charges and noncash equity based compensation expenses related to any grant of stock, stock options or other equity-based awards (including, without limitation, restricted stock units or stock appreciation rights) of such Person or any of its Restricted Subsidiaries recorded under GAAP, noncash charges related to warrants or other derivative instruments classified as equity instruments that will result in equity settlements and not cash settlements, and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for such period; *plus*

(F) fees and expenses incurred in connection with the incurrence, prepayment, amendment, or refinancing of Indebtedness (including in connection with (i) the negotiation and documentation of this Indenture and any amendments or waivers thereof and (ii) the on-going compliance with this Indenture and the Existing Notes Indenture); *minus*

(2) non-cash items and non-recurring gains or credits increasing such Consolidated Net Income for such period, in each case, on a consolidated basis for such Person and its Restricted Subsidiaries and determined in accordance with GAAP.

"*Consolidated Interest Expense*" means the sum of:

(1) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income of such Person and its Restricted Subsidiaries with respect to all outstanding Indebtedness of such Person and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under hedging agreements; *plus*

(2) non-cash interest expense resulting solely from:

(A) the net amortization of original issue discount and original issuance premium from the issuance of Indebtedness of such Person and its Restricted Subsidiaries (excluding the Notes and the Existing Notes), *plus*

(B) pay-in-kind interest expense of such Person and its Restricted Subsidiaries,

but excluding, for the avoidance of doubt,

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in this clause (2) (including as a result of the effects of acquisition method accounting or pushdown accounting);

(ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of Indebtedness or obligations under Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—Derivatives and Hedging;

(iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates;

(iv) any "additional interest" owing pursuant to a registration rights agreement with respect to any securities;

(v) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including, without limitation, any Indebtedness issued in connection with the Transactions;

(vi) penalties and interest relating to taxes;

(vii) accretion or accrual of discounted liabilities not constituting Indebtedness;

(viii) interest expense attributable to a direct or indirect parent entity resulting from push-down accounting;

(ix) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting; and

(x) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential), with respect thereto and with respect to the Transactions, any acquisition or Investment permitted hereunder, all as calculated on a consolidated basis.

For purposes of this definition, interest on a capital lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such capital lease in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person for such period, determined on a consolidated basis, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including any unusual or non-recurring operating expenses directly attributable to the implementation of cost savings initiatives and any accruals or reserves in respect of any extraordinary, non-recurring or unusual items), severance, relocation costs, integration and facilities' or bases' opening costs and other business optimization expenses (including related to new product introductions and other strategic or cost savings initiatives), restructuring charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements, signing costs, retention or completion bonuses, other executive recruiting and retention costs, transition costs, costs related to closure/consolidation of facilities or bases and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) at the election of the Issuer, with respect to any quarterly period, the cumulative effect of a change in accounting principles and changes as a result of adoption or modification of accounting policies during such period;

(3) the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or, if not paid in cash or Cash Equivalents, but later converted into cash or Cash Equivalents, upon such conversion) by such Person to the referent Person or a Restricted Subsidiary thereof in respect of such period;

(4) any fees and expenses (including any transaction or retention bonus or similar payment) incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, recapitalization, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with FASB Accounting Standards Codification Topic 805— Business Combinations and gains or losses associated with FASB Accounting Standards Codification Topic 460—Guarantees);

(5) any income (loss) for such period attributable to the early extinguishment of Indebtedness, Hedging Obligations or other derivative instruments (including deferred financing costs written off and premiums paid);

(6) accruals and reserves, contingent liabilities and any gains or losses on the settlement of any pre-existing contractual or non-contractual relationships that are established or adjusted as a result of the Transactions in accordance with GAAP (including any adjustment of estimated payouts on existing earn-outs) or changes as a result of the adoption or modification of accounting policies during such period;

(7) non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive-based compensation awards or arrangements;

(8) any income (loss) attributable to deferred compensation plans or trusts;

(9) any gain (loss) (less all fees and expenses relating thereto) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business and consistent with past practice) or discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of);

(10) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—Financial Instruments; *provided* that any cash payments or receipts relating to transactions realized in a given period shall be taken into account in such period;

(11) any non-cash gain (loss) related to currency remeasurements of Indebtedness (including the net loss or gain resulting from Hedging Obligations for currency exchange risk and revaluations of intercompany balances and other balance sheet items);

(12) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures (provided, in each case, that the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Income for the period in which such cash payment was made);

(13) any impairment charge or asset write-off or write-down (including related to intangible assets (including goodwill), long-lived assets, and investments in debt and equity securities);

(14) any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowance related to such item; and

(15) costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and Public Company costs.

There shall be excluded from Consolidated Net Income for any period the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto and deferred rent) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries), as a result of the Transactions, any acquisition consummated prior to the Issue Date and any other acquisition (by merger, consolidation, amalgamation or otherwise) or other Investment or the amortization or write-off of any amounts thereof.

In addition, to the extent not already included in Consolidated Net Income, Consolidated Net Income shall include the amount of proceeds received or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is in fact reimbursed within 365 days of the date of the insurable or indemnifiable event (net of any amount so added back in any prior period to the extent not so reimbursed within the applicable 365-day period), due from business interruption insurance or reimbursement of expenses and charges that are covered by indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Indenture.

"*Consolidated Total Debt Ratio*" means, as of any Applicable Calculation Date, the ratio of (1) Consolidated Total Indebtedness of the Issuer and its Restricted Subsidiaries minus cash and Cash Equivalents of the Issuer and its Restricted Subsidiaries, in each case, computed as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Applicable Calculation Date to (2) the Issuer's Consolidated EBITDA for the Applicable Measurement Period, in each case with such pro forma adjustments to Consolidated Total Indebtedness, cash, Cash Equivalents and Consolidated EBITDA as are appropriate and consistent with the pro forma adjustment provisions set forth in this definition of Consolidated Total Debt Ratio (other than as set forth in the first proviso to the first paragraph of this definition).

For purposes of this definition, whenever pro forma effect is to be given to a transaction, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer. 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 Applicable Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized 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 or, if lower, the maximum commitments under such revolving credit facility as of the Applicable Calculation Date. 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 Issuer may designate.

"*Consolidated Total Indebtedness*" means, as at any date of determination, an amount equal to the sum of:

(1) the aggregate amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, unreimbursed drawings under letters of credit, Obligations in respect of Capitalized Lease Obligations and third-party debt obligations evidenced by promissory notes and similar instruments (and excluding, for the avoidance of doubt, (A) all undrawn amounts under revolving credit facilities, (B) Hedging Obligations, and (C) performance bonds or any similar instruments); and

(2) the aggregate amount of all outstanding Disqualified Stock of the Issuer and all Preferred Stock of the 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 determined on a consolidated basis in accordance with GAAP.

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 in good faith by the senior management of the Issuer.

"*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 obligation*") 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,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds:

(A) for the purchase or payment of any such primary obligation, or

(B) 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

(3) 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.

"*Corporate Trust Office*" means the designated office of the Trustee at which at any particular time this Indenture shall be administered, which office at the date hereof is located at Seattle Tower, 1420 Fifth Ave., 10th Floor, PD-WA-T10W, Seattle, WA 98101, Attention: R. Krupske (Accelerate Diagnostics, Inc.) or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the designated 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 Issuer).

"*Covenant Defeasance*" has the meaning specified in Section 13.03(a) of this Indenture.

"*CUSIP number*" has the meaning specified in Section 3.12 of this Indenture.

"*Declined Proceeds*" has the meaning specified in Section 10.17(d) of this Indenture.

"*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.

"*Defaulted Interest*" has the meaning specified in Section 3.07(f) of this Indenture.

"*Depository*" means The Depository Trust Company, its nominees and their respective successors.

"*Derivative Instrument*" with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person's investment in the notes (other than a Regulated Bank or Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the notes and/or the creditworthiness of the Issuer and/or any one or more of the Guarantors (the "*Performance References*").

"*DIP Financing*" has the meaning specified in Section 10.19 of this Indenture.

"*DIP Rollup*" has the meaning specified in Section 10.19 of this Indenture.

"*Directing Holder*" has the meaning specified in Section 6.02(b) of this Indenture.

"*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 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 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*, *however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employees' termination, death or disability; *provided*, *further*, that any Capital Stock held by any future, current or former employee, director, officer, manager or consultant of the Issuer, any of its Subsidiaries or any other entity in which the Issuer or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of the Issuer (or the compensation committee thereof) shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries pursuant to any stockholders' agreement, management equity plan, stock option plan or any other management or employee benefit plan or agreement or in order to satisfy applicable statutory or regulatory obligations.

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

"*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.

"*euro*" means the single currency of participating member states of the EMU.

"*Event of Default*" has the meaning specified in Section 5.01 of this Indenture.

"*Excess Proceeds*" has the meaning specified in Section 10.17(c) of this Indenture.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Excluded Assets*" has the meaning specified in the Security Agreement.

"*Excluded Subsidiary*" means (a) any Subsidiary that is prohibited by applicable law or by any contractual obligation existing on the Issue Date or at the time such Subsidiary is acquired and not incurred in contemplation of such acquisition, as applicable, from guaranteeing the Issuer's Obligations under this Indenture and the Notes or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee (in each case, only for so long as such restriction is continuing) unless such consent, approval, license or authorization has been received, (b) any Foreign Subsidiary, (c) [reserved], (d) any FSHCO, (e) any Immaterial Subsidiary or (f) any other Subsidiary with respect to which, in the reasonable judgment of the Required Holders (in consultation with the Issuer), the cost or other consequences (including any adverse tax consequences) of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Holders therefrom; *provided*, that any Subsidiary that is an obligor with respect to Indebtedness (other than Capitalized Lease Obligations) permitted under this Indenture (including, without limitation, the Existing Notes) shall not constitute an Excluded Subsidiary.

"*Existing Notes*" means the aggregate principal amount of 5.00% Senior Secured Convertible Notes due 2026 issued pursuant to the Existing Notes Indenture and outstanding as of the Issue Date.

"*Existing Notes Indenture*" means the indenture, dated as of June 9, 2023, as amended and supplemented from time to time, by and between the Issuer and U.S. Bank Trust Company, National Association, as trustee and collateral agent.

"*Exit Premium*" means, upon any repayment (including in connection with an Asset Sale Offer or a Change of Control Offer and repayment on the stated maturity date of the Notes), redemption, or acceleration upon any Event of Default, a fee equal to the percentage set forth below of the sum of (1) the aggregate principal amount (including PIK Interest previously paid in the form of an increase in the aggregate principal amount of the Notes) plus (2) accrued and unpaid interest to be repaid, redeemed or accelerated:

Period	**Percentage**
On or prior to June 30, 2025	30.00%
July 1, 2025 and thereafter	42.50%

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

"*FATCA*" has the meaning specified in Section 1.19 of this Indenture.

"*First Lien/Second Lien Intercreditor Agreement*" means that certain First Lien/Second Lien Intercreditor Agreement, dated as of August 8, 2024, by and among the Issuer, the Guarantors, the notes collateral agent to the Existing Notes, and the Notes Collateral Agent, as amended, amended or restated, supplemented, or otherwise modified from time to time.

"*Fitch*" means Fitch Ratings Inc. and any successor to its rating agency business.

"*Foreign Subsidiary*" means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia and any direct or indirect Subsidiary of such Foreign Subsidiary.

"*FSHCO*" has the meaning set forth in the Security Agreement.

"*Funding Guarantor*" has the meaning specified in Section 12.05 of this Indenture.

"*GAAP*" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time; *provided* that all terms of an accounting or financial nature used in this Indenture shall be construed, and all computations of amounts and ratios referred to in this Indenture shall be made (a) without giving effect to any election under FASB Accounting Standards Codification Topic 825—Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of the Issuer or any Subsidiary at "fair value," as defined therein, and (b) the accounting for operating leases and financing or capital leases under U.S. GAAP as in effect on May 16, 2017 (including, without limitation, FASB Accounting Standards Codification Topic 840—Leases) shall apply for the purpose of determining compliance with the provisions of this Indenture, including the definition of Capitalized Lease Obligation. At any time after the Issue Date, the Issuer may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Indenture); *provided* that any such election, once made, shall be irrevocable; *provided*, *further*, any calculation or determination in this Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Issuer's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Issuer shall give notice of any such election made in accordance with this definition to the Trustee. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition shall not be treated as an incurrence of Indebtedness.

If there occurs a change in generally accepted accounting principles and such change would cause a change in the method of calculation of any standards, terms or measures used in a covenant under Article Ten or in the Existing Notes Indenture as determined in

good faith by the Issuer (an "*Accounting Change*"), then the Issuer may elect, as evidenced by a written notice of the Issuer to the Trustee, that such standards, terms or measures shall be calculated as if such Accounting Change had not occurred.

"*Government Securities*" means securities that are:

(1) direct obligations of, or obligations guaranteed by, the United States for the timely payment of which its full faith and credit is pledged; or

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

which, in either case, are not callable or redeemable at the option of the issuers 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 Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository 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 Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"*Governmental Authority*" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

"*guarantee*" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business and consistent with past practice), 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 Issuer's Obligations under this Indenture and the Notes.

"*Guarantor*" means, each Subsidiary of the Issuer executes this Indenture as a Guarantor on the Issue Date and each other Restricted Subsidiary of the Issuer that thereafter guarantees the Notes in accordance with the terms of this Indenture, until, in each case, such Person is released from the guarantee of the Notes in accordance with the terms of this Indenture.

"*Hedging Obligations*" means, with respect to any Person, (1) the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate floor agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer, modification or mitigation of interest rate, currency, commodity or equity risks either generally or under specific contingencies 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, with reference to any Indebtedness or other Obligations, any holder or lender of, or trustee or collateral agent or other authorized representative with respect to, such Indebtedness or Obligations, and, in the case of Hedging Obligations, any counter-party to such Hedging Obligations.

"*Holder*" means the Person in whose name a Note is registered on the Note Registrar's books.

"*IFRS*" means the international financial reporting standards and interpretations issued by the International Accounting Standards Board.

"*Immaterial Subsidiary*" means, at any date of determination, each Subsidiary of the Issuer that does not hold more than 5.0% of the consolidated total assets of the Issuer and does not contribute more than 5% of the consolidated revenues of the Issuer.

"*incur*" has the meaning specified in Section 10.11(a) of this Indenture.

"*incurrence*" has the meaning specified in Section 10.11(a) of this Indenture.

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

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(A) in respect of borrowed money;

(B) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(C) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) 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 and consistent with past practice, and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet of such Person in accordance with GAAP and if not paid within 120 days after becoming due and payable; or

(D) representing the net obligations under any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness in clauses (A) through (D) (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 Non-Capitalized Lease Obligations, straight-line leases and operating leases shall be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business and consistent with past practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any assets owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of (A) the fair market value of such assets at such date of determination, and (B) the amount of such Indebtedness of such other Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (A) Contingent Obligations incurred in the ordinary course of business and consistent with past practice, (B) accrued expenses and royalties, (C) obligations under or in respect of operating leases or Sale and Lease-Back Transactions (except any resulting Capitalized Lease Obligations), (D) prepaid or deferred revenue arising in the ordinary course of business, or (E) asset retirement obligations and obligations in respect of performance bonds, reclamation and workers' compensation (including pensions and retiree medical care) that are not overdue by more than 90 days.

"*Indenture*" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

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

"*Initial Notes*" has the meaning specified in the first recital of this Indenture.

"*Intellectual Property*" means intellectual property, including all (1) (A) patents, inventions, processes, developments, technology, and know-how; (B) copyrights and works of authorship in any media, including graphics, advertising materials, labels, package designs, and photographs; (C) trademarks, service marks, trade names, brand names, corporate names, Internet domain names, logos, trade dress, and other source indicators, and the goodwill of any business symbolized thereby; and (D) trade secrets, confidential, proprietary, or non-public information, and (2) all registrations, issuances, applications, renewals, extensions, substitutions, continuations, continuations-in-part, divisionals, re-issues, re-examinations, or similar legal protections related to the foregoing.

"*Interest Payment Date*" means the last Business Day of each March, June, September and December.

"*Interest Period*" means the applicable period commencing on and including an Interest Payment Date and ending on and including the day immediately preceding the next succeeding Interest Payment Date (or, with respect to the last Interest Period prior to the maturity date, the day immediately preceding the maturity date), with the exception that the first Interest Period shall commence on and include the Issue Date and end on and include the day immediately preceding the first scheduled Interest Payment Date.

"*Interest Rate*" has the meaning specified in Section 3.07(a) of this Indenture.

"*Investment Grade Rating*" means a rating equal to or higher than:

(1) Baa3 (or the equivalent), with respect to Moody's;

(2) BBB- (or the equivalent) with respect to S&P;

(3) BBB- (or the equivalent), with respect to Fitch; or

(4) an equivalent rating by any other Rating Agency.

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) above, which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States 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, moving, entertainment, travel and similar expenses and advances to officers, directors, managers, employees and consultants, in each case made in the ordinary course of business and 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 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.

The amount of any Investment outstanding at any time shall be the original cost of such Investment.

"*ISIN*" has the meaning specified in Section 3.12 of this Indenture.

"*Issue Date*" means August 8, 2024.

"*Issuer*" means Accelerate Diagnostics, Inc. and not any of its Subsidiaries.

"*Issuer Request*" or "*Issuer Order*" means a written request or order signed in the name of the Issuer by an Officer thereof, and delivered to the Trustee.

"*Legal Defeasance*" has the meaning specified in Section 13.02(a) of this Indenture.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which commercial banking institutions are not required or authorized to be open in the State of New York or in the place of payment.

"*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, registered, published 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 a Non-Capitalized Lease Obligation be deemed to constitute a Lien.

"*Long Derivative Instrument*" means a Derivative Instrument:

(1) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References; and/or

(2) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"*Master Agreement*" has the meaning specified in the definition of Hedging Obligations.

"*Material Property*" means assets, including intellectual property, owned by the Issuer or its Subsidiaries that is material to the business, operations, assets, financial condition or prospects of the Issuer and its Subsidiaries, taken as a whole.

"*Material Real Property*" means each fee owned parcel of real property owned by the Issuer or any Guarantor having a book value equal to or in excess of $1.0 million. For the purpose of determining the relevant value under this Indenture with respect to the preceding clause, such value shall be determined as of (a) the Issue Date for real property owned as of the Issue Date, (b) the date of acquisition for real property acquired after the Issue Date or (c) the date on which the entity owning such real property becomes a Guarantor after the Issue Date, in each case as reasonably determined by the Issuer.

"*Maturity*" means, when used with respect to any Note, the date on which the principal of such Note or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption or otherwise.

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"*Mortgaged Property*" means each parcel of Material Real Property and the improvements thereon with respect to which a mortgage shall be granted pursuant to Section 14.10.

"*Net Income*" means, with respect to any Person, the net income (loss) attributable to such Person and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock (other than Disqualified Stock) dividends.

"*Net Proceeds*" means the aggregate cash proceeds and the fair market value of any Cash Equivalents received by the Issuer or any of the Restricted Subsidiaries in respect of any Asset Sale, net of:

(1) fees, out-of-pocket expenses and other direct costs relating to such Asset Sale, including, without limitation, legal, accounting, consulting, investment banking and other customary fees, underwriting discounts and commissions, survey costs, title and recordation expenses, title insurance premiums, payments made in order to obtain a necessary consent or required by applicable law and brokerage and sales commissions and any relocation expenses incurred as a result thereof;

(2) taxes 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) the pro rata portion of Net Proceeds thereof attributable to minority interests and not available for distribution to or for the account of the Issuer and the Restricted Subsidiaries as a result thereof;

(4) any costs associated with unwinding any related Hedging Obligations in connection with such transaction;

(5) any deduction of appropriate amounts to be provided by the 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 Issuer or any of the 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;

(6) 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 Issuer or any of its Restricted Subsidiaries; and

(7) the amount of any liabilities (other than Indebtedness in respect of the Existing Notes and the Notes) directly associated with such asset being sold and retained by the Issuer or any of its Restricted Subsidiaries.

"*Net Short*" means, with respect to a Holder or beneficial owner, as of a date of determination, either:

(1) the value of its Short Derivative Instruments exceeds the sum of:

(A) the value of its Notes; *plus*

(B) the value of its Long Derivative Instruments as of such date of determination; or

(2) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each, as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to any Issuer or any Guarantor immediately prior to such date of determination.

"*Non-Capitalized 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-Capitalized Lease Obligation.

"*Note Documents*" means this Indenture, the Notes, the Guarantees and the Security Documents relating to the Notes.

"*Note Register*" and "*Note Registrar*" have the respective meanings specified in Section 3.02(c).

"*Noteholder Direction*" has the meaning specified in Section 6.02(b) of this Indenture.

"*Notes*" has the meaning stated in the first recital of this Indenture. The Initial Notes, the PIK Notes and the Additional Notes shall be treated as a single class for all purposes of this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes, the PIK Notes and any Additional Notes; *provided* 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.

"*Notes Collateral Agent*" means U.S. Bank Trust Company, National Association, in its capacity as the collateral agent for the Notes, until a successor replaces it in such capacity and, thereafter, means the successor.

"*Notes Custodian*" means the custodian with respect to a global Note (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

"*Notes Obligations*" means Obligations in respect of the Note Documents.

"*Notes Secured Parties*" means the Trustee, the Notes Collateral Agent and the Holders and any agent or any subagent appointed by the Trustee or the Notes Collateral Agent pursuant to any Security Document.

"*Obligations*" means any principal, interest (including any interest 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 is an allowed claim under applicable state, provincial, federal or foreign law), premium (including, without limitation, the Exit Premium), penalties, fees, expenses, costs, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, premium, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"*Officer*" means, with respect to the Issuer, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, the Secretary, or any President or Vice President (whether or not designated by a number or numbers or word or words added before or after the title "*President*" or "*Vice President*").

"*Officer's Certificate*" means a certificate signed on behalf of the Issuer by an Officer of the Issuer or on behalf of any other Person, as the case may be, that meets the requirements set forth in this Indenture.

"*Opinion of Counsel*" means a written opinion from legal counsel who is reasonably acceptable to the Trustee (which opinion may be subject to customary assumptions and exclusions); such legal counsel may be an employee of or counsel to the Issuer or the Trustee.

"*Outstanding*" means, when used with respect to Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(1) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(1) Notes, or portions thereof, for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer) in trust or set aside and segregated in trust by the Issuer (if the Issuer shall act as its own Paying Agent) for the Holders of such Notes; *provided* that, if such Notes are to be redeemed, written notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(2) Notes, except to the extent provided in Section 13.02 and Section 13.03, with respect to which the Issuer has effected Legal Defeasance or Covenant Defeasance as provided in Article Thirteen; and

(3) Notes which have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a Protected Purchaser in whose hands the Notes are valid obligations of the Issuer;

provided that, in determining whether the Holders of the requisite principal amount of Outstanding Notes have given any request, demand, authorization, direction, consent, notice or waiver hereunder, Notes owned by the Issuer or its Affiliates shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such determination or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded.

"*Paying Agent*" means any Person (including the Issuer acting as Paying Agent) authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Notes on behalf of the Issuer.

"*Performance References*" has the meaning specified in the definition of Derivative Instrument.

"*Permitted Holders*" means (1) Jack Schuler; (2) the siblings, descendants (including adoptees), step children, step grandchildren, nieces and nephews and their respective spouses of the persons described in clause (1); (3) any trusts or private foundations created by or for the benefit of, or controlled by, any of the persons described in clauses (1) and (2) or any trusts or private foundations created for the benefit of any such trust or private foundation; (4) in the event of the incompetence or death of any of the persons described in clauses (1) and (2), such person's estate, executor, administrator, committee or other personal representative or similar fiduciary or beneficiaries, heirs, devisees or distributees, in each case, who at any particular date shall beneficially own capital interests of the Issuer; (5) any family investment company or similar entity created by or for the benefit of any of the persons described in clauses (1) and (2) or any other family investment company or similar entity created for the benefit of any such family investment company or similar entity or (6) any group consisting solely of persons described in clauses (1)-(5).

"*Permitted Investments*" means:

(1) any Investment in the Issuer or any Guarantor;

(2) any Investment in cash and Cash Equivalents or Investment Grade Securities;

(3) any Investment in securities or other assets (including earn-outs) not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 10.17 or any other disposition of assets not constituting an Asset Sale;

(4) 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 existing on the Issue Date or binding commitment in effect on the Issue Date; *provided* that the amount of any such Investment may be increased in such extension, modification, replacement, reinvestment or renewal only (A) 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 (B) as otherwise permitted under this Indenture;

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

(A) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by the Issuer or any 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;

(B) in satisfaction of judgments against other Persons;

(C) as a result of a foreclosure by the 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; or

(D) received in compromise or resolution of (i) obligations of trade creditors, suppliers or customers that were incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary and consistent with past practice, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor, supplier or customer, or (ii) litigation, arbitration or other disputes;

(6) Hedging Obligations permitted under Section 10.11(b)(9);

(7) guarantees of Indebtedness permitted under the covenant described in Section 10.11, performance guarantees and Contingent Obligations incurred in the ordinary course of business and consistent with past practice and the creation of Liens on the assets of the Issuer or any Restricted Subsidiary in compliance with the covenant described under Section 10.12;

(8) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with Section 10.13(b) (except transactions described in clauses (2), (4) and (6) of Section 10.13(b));

(9) any Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment or other similar assets, or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business, consistent with past practice, in good faith and for a bona fide business purpose;

(10) loans and advances to, or guarantees of Indebtedness of, officers, directors, managers, employees and consultants for business-related travel expenses, moving or relocation expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in the ordinary course of business and consistent with past practice, or to fund such Person's purchase of Equity Interests of the Issuer or any Restricted Subsidiary;

(11) advances, loans or extensions of trade credit (including the creation of receivables) or prepayments to suppliers or lessors or loans or advances made to distributors, and performance guarantees, in each case in the ordinary course of business, consistent with past practice, in good faith and for a bona fide business purpose;

(12) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business and consistent with past practice;

(13) repurchases of the Notes;

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

(15) Investments made in the ordinary course of business, consistent with past practice, in good faith and for a bona fide business purpose in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees;

(16) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business and consistent with past practice;

(17) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business and consistent with past practice;

(18) contributions to a "rabbi" trust for the benefit of employees, directors, managers, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Issuer or any Restricted Subsidiary;

(19) non-cash Investments in connection with tax planning and reorganization activities to the extent in the ordinary course of business, consistent with past practice and made in good faith and for a bona fide business purpose (and not for any other purpose, including, without limitation, a "liability management transaction"); *provided* that after giving effect to any such activities, the security interests of the Holders in the Collateral, taken as a whole, would not be materially impaired; and

(20) the licensing and contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons, in the ordinary course of business, consistent with past practice, in good faith and for a bona fide business purpose.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens for taxes, assessments or other governmental charges that are not overdue for a period of more than 60 days or not yet payable or subject to penalties for nonpayment or that are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or for property taxes on property the Issuer or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property;

(2) Liens imposed by law or regulation, such as landlords', carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's, architects' or construction contractors' Liens and other similar Liens that secure amounts not overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens 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 proceeding for review, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(3) Liens incurred or deposits made in the ordinary course of business and consistent with past practice (A) in connection with workers' compensation, unemployment insurance, employers' health tax, and other social security 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), and (B) securing reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person or otherwise supporting the payment of items set forth in the foregoing clause (A);

(4) Liens incurred or deposits made to secure the performance of bids, tenders, trade contracts, governmental contracts, leases, public or statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements, completion guarantees, stays, customs and appeal bonds, performance bonds, bankers' acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations), deposits as security for contested taxes or import duties or for payment of rent, performance and return of money bonds and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, incurred in the ordinary course of business and consistent with past practice;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, 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 and other similar charges or encumbrances in respect of real property which were not incurred in connection with Indebtedness and which do not in any case materially interfere with the ordinary conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole;

(6) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 5.01(a)(5);

(7) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Issuer or any of its Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments,

provided that such Lien secures only the obligations of the Issuer or such Restricted Subsidiaries in respect of such letter of credit to the extent such obligations are permitted under Section 10.11 and 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;

(8) rights of set-off, banker's liens, netting agreements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(9) Liens arising from Uniform Commercial Code financing statements, including precautionary financing statements, or any similar filings made in respect of operating leases or consignments entered into by the Issuer or any of its Restricted Subsidiaries or disposition of assets;

(10) Liens existing on the Issue Date;

(11) Liens securing Indebtedness permitted to be incurred pursuant to Section 10.11(b)(4), (11), and (12); *provided* that Liens securing Indebtedness permitted to be incurred pursuant to Section 10.11(b)(4) extend only to the assets purchased with the proceeds of such Indebtedness, accessions to such assets and the proceeds and products thereof, and any lease of such assets (including accessions thereto) and the proceeds and the products thereof; *provided*, *further*, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(12) leases, licenses, subleases or sublicenses granted to others that do not (A) interfere in any material respect with the business of the Issuer and its Restricted Subsidiaries, taken as a whole, or (B) secure any Indebtedness;

(13) 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;

(14) Liens (A) 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, (B) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and consistent with past practice, and (C) in favor of a banking or other financial institution or electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking or finance industry;

(15) Liens (A) on cash advances or escrow deposits in favor of 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 otherwise in connection with any escrow arrangements with respect to any such Investment (including any letter of intent or purchase agreement with respect to such Investment), and (B) consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 10.17, in each case, solely to the extent such Investment or sale, disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(16) Liens existing on property at the time of its acquisition (by a merger, consolidation or amalgamation or otherwise) or existing on the property or shares of stock or other assets of any Person at the time such Person becomes a Subsidiary, in each case after the Issue Date; *provided* that (A) such Lien was not created in contemplation of such acquisition (by a merger, consolidation or amalgamation or otherwise) or such Person becoming a Subsidiary, (B) such Lien does not extend to or cover any other assets or property of the Issuer or any Restricted Subsidiary (other than assets and property affixed

or appurtenant thereto and the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted under this Indenture that require or include, 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 (C) the Indebtedness secured thereby is permitted under Section 10.11;

(17) any interest or title of a lessor under leases (including leases constituting Non-Capitalized Lease Obligations, but excluding leases constituting Capitalized Lease Obligations) entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business and consistent with past practice;

(18) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business and consistent with past practice;

(19) Liens deemed to exist in connection with Investments in repurchase agreements permitted under clause (5) of the definition of Cash Equivalents;

(20) 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 and not for speculative purposes;

(21) Liens that are contractual rights of setoff or rights of pledge (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business and consistent with past practice of the Issuer and its Restricted Subsidiaries, or (C) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business and consistent with past practice;

(22) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Issuer or any of its Restricted Subsidiaries are located;

(23) (A) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, or (B) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business and consistent with past practice;

(24) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* such satisfaction or discharge is permitted under this Indenture;

(25) receipt of progress payments and advances from customers in the ordinary course of business and consistent with past practice to the extent the same creates a Lien on the related inventory and proceeds thereof;

(26) Liens securing Hedging Obligations and the costs thereof;

(27) Liens on property or assets used to defease or to irrevocably satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Indenture;

(28) Liens on vehicles or equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business and consistent with past practice and for bona fide business purposes;

(29) Liens to secure any modification, refinancing, refunding, restatement, exchange, extension, renewal or replacement (or successive refinancing, refunding, restatement, exchange, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (11), (15), and (16) of this definition; *provided*, *however*, that (A) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus accessions, additions and improvements on such property, including after-acquired property that is (i) affixed or incorporated into the

property covered by such Lien, (ii) after-acquired property subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include 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 proceeds and products thereof), (B) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (x) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (11), (15), and (16) of this definition at the time the original Lien became a Permitted Lien under this Indenture, and (y) an amount necessary to pay accrued but unpaid interest on such Indebtedness and any dividend, premium (including tender premiums), defeasance costs, underwriting discounts and any fees, costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such modification, refinancing, refunding, extension, renewal or replacement;

(30) 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, to the extent existing on the Issue Date;

(31) 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 and consistent with past practice;

(32) agreements to subordinate any interest of the Issuer or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Issuer or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business and consistent with past practice;

(33) Liens securing the Notes (including any PIK Notes or increased principal amount of Notes issued from time to time as a PIK Payment in accordance with this Indenture, but other than any Additional Notes not issued in a Refinancing Indebtedness) and the related Guarantees.

For purposes of determining compliance with this definition, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but are permitted to be incurred in part under any combination thereof and of any other available exemption, and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, Issuer shall, in its sole discretion, classify (but may not thereafter reclassify) such Lien (or any portion thereof) in any manner that complies with this definition.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"*Permitted Parent*" means any Public Company (or Wholly-Owned Subsidiary of such Public Company), except to the extent (and until such time as) any Person or group is deemed to be or becomes a beneficial owner of Voting Stock of such Public Company representing more than 50% of the total voting power of the Voting Stock of such Public Company (as determined in accordance with the provisions of the final paragraph of the definition of Change of Control).

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

"*PIK Interest*" means interest payable on the Notes by increasing the aggregate principal amount of an outstanding global Note or issuing PIK Notes under this Indenture having the same terms as the Initial Notes, subject to the terms of this Indenture and the Notes.

"*PIK Notes*" has the meaning specified in Section 3.07(c) of this Indenture.

"*PIK Payment*" means any payment of PIK Interest on any Interest Payment Date for the Interest Period ended on such Interest Payment Date.

"*Position Representation*" has the meaning specified in Section 6.02(b) of this Indenture.

"*Post-Petition Interest*" means any interest or entitlement to fees or expenses or other charges that accrue after the commencement of any insolvency or liquidation proceeding whether or not allowed or allowable as a claim in any such insolvency or liquidation proceeding.

"*Predecessor Note*" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 3.06 in exchange for a mutilated Note or in lieu of a destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

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

"*primary obligation*" has the meaning specified in the definition of Contingent Obligations.

"*primary obligor*" has the meaning specified in the definition of Contingent Obligations.

"*Protected Purchaser*" has the meaning specified in Section 3.06(a) of this Indenture.

"*Public Company*" means any Person with a class or series of Voting Stock that is traded on the New York Stock Exchange, the NASDAQ or the London Stock Exchange.

"*Purchase Money Obligations*" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), 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).

"*Rating Agency*" means (1) S&P, Moody's and Fitch, or (2) if S&P, Moody's or Fitch or each of them shall not make a corporate rating with respect to the Issuer or a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer, which shall be substituted for any or all of S&P, Moody's or Fitch, as the case may be, with respect to such corporate rating or the rating of the Notes, as the case may be.

"*Redemption Date*" has the meaning specified in Section 11.01(a) of this Indenture.

"*Redemption Price*" means, when used with respect to any Note to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

"*refinance*" has the meaning specified in Section 10.11(b)(11) of this Indenture.

"*Refinancing Indebtedness*" has the meaning specified in Section 10.11(b)(11) of this Indenture.

"*Refunding Capital Stock*" has the meaning specified in Section 10.10(b)(2) of this Indenture.

"*Regular Record Date*" has the meaning specified in Section 3.07(b) of this Indenture.

"*Regulated Bank*" means an Approved Commercial Bank that is:

(1) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation;

(2) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913, as amended;

(3) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors under 12 CFR part 211;

(4) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (3); or

(5) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

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

"*Related Person*" has the meaning specified in Section 14.08(b) of this Indenture.

"*Required Holders*" means, at any time, the Holders of at least a majority in aggregate principal amount of the then Outstanding Notes (exclusive of Notes then owned by the Company or any of its Affiliates of which the Trustee has actual knowledge).

"*Responsible Officer*" means any vice president, any assistant vice president, any assistant treasurer, any assistant secretary, any trust officer or assistant trust officer, or any other officer of the Trustee or the Notes Collateral Agent, as applicable, customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter relating to this Indenture, any other officer to whom such 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 Investment*" means an Investment other than a Permitted Investment.

"*Restricted Payments*" has the meaning specified in Section 10.10(a) of this Indenture.

"*Restricted Subsidiary*" means each Subsidiary of the Issuer. For the avoidance of doubt, as of the Issue Date, no Unrestricted Subsidiary shall exist and, on and after the Issue Date, no Subsidiary shall be designated as an Unrestricted Subsidiary without the consent of each Holder of the Notes.

"*S&P*" means S&P Global Ratings and any successor to its rating agency business.

"*Sale and Lease-Back Transaction*" means any arrangement with any Person providing for the leasing by the Issuer 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 Issuer or such Restricted Subsidiary to such Person in contemplation of such leasing.

"*Screened Affiliate*" means any Affiliate of a Holder (1) that makes investment decisions independently from such Holder and any other Affiliate of such Holder that is not a Screened Affiliate, (2) that has in place customary information screens between it and such Holder and any other Affiliate of such Holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Issuer or its Subsidiaries, (3) whose investment policies are not directed by such Holder or any other Affiliate of such Holder that is acting in concert with such Holder in connection with its investment in the Notes, and (4) whose investment decisions are not influenced by the investment decisions of such Holder or any other Affiliate of such Holder that is acting in concert with such Holders in connection with its investment in the Notes.

"*SEC*" means the U.S. Securities and Exchange Commission or any successor agency thereto.

"*Second Change of Control Payment Date*" has the meaning specified in Section 10.16(f) of this Indenture.

"*Second Commitment*" has the meaning specified in Section 10.17(b) of this Indenture.

"*Secured Indebtedness*" means any Indebtedness of the 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.

"*Security Agreement*" means the Security Agreement, dated as of the Issue Date, by and among the Issuer, the subsidiary guarantors from time to time party thereto, and the Notes Collateral Agent for the benefit of the Notes Secured Parties.

"*Security Document Order*" has the meaning specified in Section 14.08(s) of this Indenture.

"*Security Documents*" means the First Lien/Second Lien Intercreditor Agreement, the Security Agreement, and all other security agreements, pledge agreements, mortgages, collateral assignments, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Issuer or any Guarantor (including, without limitation, Uniform Commercial Code financing statements or equivalent statements in any other jurisdiction) creating (or purporting to create) a Lien upon Collateral in favor of the Notes Collateral Agent, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the terms of the First Lien/Second Lien Intercreditor Agreement.

"*Short Derivative Instrument*" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References, and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"*Similar Business*" means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, complementary, incidental or ancillary thereto, or is a reasonable extension, development or expansion thereof.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Issuer pursuant to Section 3.07(f).

"*Specified Indebtedness*" has the meaning specified in Section 9.02(a)(17) of this Indenture.

"*Stated Maturity*" means, when used with respect to any Note or any installment of principal thereof or interest thereon, the date specified in such Note as the fixed date on which the principal of such Note or such installment of principal or interest is due and payable.

"*Subject Person*" has the meaning specified in the definition of Change of Control.

"*Subordinated Indebtedness*" means, with respect to the Notes and the Guarantees:

(1) any Indebtedness of the Issuer which is (i) by its terms subordinated in right of payment to the Notes, (ii) secured on a junior lien priority basis to the Notes, or (iii) unsecured,

(2) any Indebtedness of any Guarantor which is (i) by its terms subordinated in right of payment to the Guarantee of such entity of the Notes, (ii) secured on a junior lien priority basis to the Guarantees, or (iii) unsecured,

in each case, excluding intercompany Indebtedness owing to the Issuer or its Affiliates.

"*Subsidiary*" means, with respect to any Person,

(1) 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 contingency) 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

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

(A) 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

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

For the avoidance of doubt, 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 Issuer's or any Restricted Subsidiary's financial statements.

"*Successor Company*" has the meaning specified in Section 8.01(a)(1) of this Indenture.

"*Successor Guarantor*" has the meaning specified in Section 8.02(a)(1)(A) of this Indenture.

"*TIA*" means the Trust Indenture Act of 1939, as amended.

"*Transfer Agent*" has the meaning specified in Section 3.02(c).

"*Transactions*" means the issuance of the Initial Notes and the consummation of any other transaction in connection with the foregoing.

"*Treasury Capital Stock*" has the meaning specified in Section 10.10(b)(2) of this Indenture.

"*Trustee*" means U.S. Bank Trust Company, National Association, in its capacity as trustee, until a successor replaces it in such capacity and, thereafter, means the successor.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Uniform Commercial Code*" means 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.

"*Verification Covenant*" has the meaning specified in Section 6.02(b) of this Indenture.

"*Vice President*" means, when used with respect to the Issuer, any Guarantor, the Trustee or the Notes Collateral Agent, any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

"*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:

(1) the sum of the products of the number of years (calculated to the nearest one-twelfth) 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

(2) the sum of all such payments.

"*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 or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

SECTION 1.03. Compliance Certificates and Opinions.

(a) Upon any application or request by the Issuer to the Trustee or the Notes Collateral Agent to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee and the Notes Collateral Agent, if applicable, an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture (including any covenant compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and, if requested by the Trustee and Notes Collateral Agent, as applicable, other than in connection with the addition of a new Guarantor or parent guarantor by execution of a supplemental indenture to this Indenture substantially in the form of Exhibit A, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 10.08(a)) shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) 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;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

(c) Neither the Trustee nor the Notes Collateral Agent shall have any responsibility or liability with respect to any matters that would have been covered by the Opinions of Counsel that are not permitted by this Section 1.03.

SECTION 1.04. Form of Documents Delivered to Trustee and Notes Collateral Agent.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.05. 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 agents duly appointed in writing; and, 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 Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 1.05.

(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 a certificate of a 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 a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of authority. 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 principal amount and serial numbers of Notes held by any Person, and the date of holding the same, shall be proved by the Note Register.

(d) If the Issuer shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. Such record date shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date. Any request, demand, authorization, direction, notice, consent, waiver or other Act of 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 anything done, omitted or suffered to be done by the Trustee, the Issuer or any Guarantor in reliance thereon, whether or not notation of such action is made upon such Note.

SECTION 1.06. Notices, Etc., to Trustee, Issuer, any Guarantor and Agent.

(a) Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee or the Notes Collateral Agent by any Holder or by the Issuer or any Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing via facsimile, email in PDF format or mailed, first class postage prepaid, or delivered by recognized overnight courier, to or with the Trustee or the Notes Collateral Agent, as applicable, at U.S. Bank Trust Company, National Association, Seattle Tower, 1420 Fifth Ave., 10th Floor, PD-WA-T10W, Seattle, WA 98101, Attention: R. Krupske (Accelerate Diagnostics, Inc.); or

(2) the Issuer or any Guarantor by the Trustee, the Notes Collateral Agent or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or delivered in writing via facsimile, or email in PDF or mailed, first class postage prepaid, or delivered by recognized overnight courier, to the Issuer

or such Guarantor addressed to Accelerate Diagnostics, Inc., 3950 South Country Club, Suite 470, Tucson, Arizona 85714, Attention: Jack Phillips, Chief Executive Officer; David B. Patience, Chief Financial Officer; Christopher Simon, Controller, or at any other address previously furnished in writing to the Trustee by the Issuer or such Guarantor.

(b) A copy of all notices to any Agent shall be sent to the Trustee at the address shown above. Any Person may change its address by giving notice of such change as set forth herein. Any notice to the Trustee or the Notes Collateral Agent shall be effective upon actual receipt.

SECTION 1.07. Notice to Holders; Waiver.

(a) Where this Indenture provides for notice of any event to Holders by the Issuer or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and delivered electronically or mailed, first class postage prepaid, to each Holder affected by such event, at his address as it appears in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Notices given by publication (including posting of information as contemplated by Section 10.09) shall be deemed given on the first date on which publication is made, notices given by first-class mail, postage prepaid, shall be deemed given five calendar days after mailing or transmitting; notices sent by overnight delivery service will be deemed given when delivered; and notices given electronically shall be deemed given when sent. Notice given in accordance with the procedures of the Depository will be deemed given on the date sent to the Depository. Any notices required to be given to the holders of Notes that are in global form shall be given to the Depository in accordance with its customary procedures therefor.

(b) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods, *provided*, *however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Issuer or any Holder elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(c) In case by reason of the suspension of or irregularities in regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event to Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice for every purpose hereunder.

(d) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.08. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience of reference only, are not intended to be considered a part hereof and shall not affect the construction hereof.

SECTION 1.09. Successors and Assigns. All agreements of the Issuer in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 12.08 hereof.

SECTION 1.10. Severability Clause. 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 1.11. Benefits of Indenture. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Note Registrar and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.12. Governing Law; Submission to Jurisdiction. This Indenture, the Notes and any Guarantee shall be governed by and construed in accordance with the laws of the State of New York. THE PARTIES HERETO AGREE TO SUBMIT TO THE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE GUARANTEES.

SECTION 1.13. Legal Holidays. In any case where any Redemption Date, Change of Control Payment Date or Stated Maturity or Maturity of any Note shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal (or premium, if any) or interest or other required payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Redemption Date, Change of Control Payment Date or at the Stated Maturity or Maturity; *provided* that no interest shall accrue on such payment for the period from and after such Redemption Date, Change of Control Payment Date, Stated Maturity or Maturity, as the case may be.

SECTION 1.14. No Personal Liability of Directors, Managers, Officers, Employees and Stockholders. No past, present or future director, manager, officer, employee, incorporator, member, partner or stockholder of the Issuer or any Guarantor or any of their parent companies or their parent entities shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees, this Indenture, the First Lien/Second Lien Intercreditor Agreement or any other Security Document or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws.

SECTION 1.15. Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be original; but such counterparts shall together constitute but one and the same instrument. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission 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. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means; *provided* that, notwithstanding anything herein to the contrary, neither the Trustee nor the Notes Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Notes Collateral Agent, as applicable, pursuant to reasonable procedures approved by the Trustee or the Notes Collateral Agent, as applicable. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the Electronic Signatures in Global and National Commerce Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (e.g., www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be legally valid, effective and enforceable for all purposes. The Issuer agrees to assume all risks arising out of the use of such electronic signatures, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.16. USA PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee and the Notes Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee or the Notes Collateral Agent. The parties to this Indenture agree that they shall provide the Trustee and the Notes Collateral Agent with such information as the Trustee or the Notes Collateral Agent may request in order for the Trustee and the Notes Collateral Agent to satisfy the requirements of the USA PATRIOT Act.

SECTION 1.17. Waiver of Jury Trial. EACH OF THE ISSUER, ANY GUARANTOR, THE TRUSTEE AND THE NOTES COLLATERAL AGENT AND EACH HOLDER OF A NOTE, BY ITS ACCEPTANCE THEREOF, THEREBY 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, THE GUARANTEES OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR HEREBY.

SECTION 1.18. 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 hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee and the Notes Collateral Agent, as applicable, shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 1.19. FATCA. In order to comply with Sections 1471-1474 of the Code, any current or future regulations or official interpretations thereof, any intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing, any similar law or regulations adopted pursuant to such an intergovernmental agreement or any agreements entered into pursuant to Section 1471(b)(1) of the Code ("*FATCA*") that a foreign financial institution, issuer, trustee, paying agent, or other party is or has agreed to be subject to related to this Indenture, the Issuer agrees (i) to use commercially reasonably efforts to provide to the Trustee sufficient information about the parties and/or transactions (including any modification to the terms of such transactions) that is reasonably requested by the Trustee so the Trustee can determine whether it has tax-related obligations under FATCA, and (ii) that the Trustee shall be entitled to make any withholding or deduction from payments under this Indenture to the extent necessary to comply with FATCA for which the Trustee shall not have any liability. The terms of this Section 1.19 shall survive the satisfaction and discharge of this Indenture.

ARTICLE TWO

NOTE FORMS

SECTION 2.01. Form and Dating. Provisions relating to the Initial Notes are set forth in Annex I attached hereto (the "*Appendix*"), which is hereby incorporated in, and expressly made part of, this Indenture. The Initial Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit 1 to the Appendix, which is hereby incorporated in, and expressly made a part of, this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form reasonably acceptable to the Issuer). The terms of the Notes set forth in the Appendix are part of the terms of this Indenture.

SECTION 2.02. Execution, Authentication, Delivery and Dating.

(a) The Notes shall be executed on behalf of the Issuer by at least one Officer. The signature of any Officer on the Notes may be manual, electronic or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Notes.

(b) Notes bearing the manual, electronic or facsimile signature of an individual who was at any time the proper Officer of the Issuer shall bind the Issuer, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or did not hold such office at the date of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Notes.

(d) At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall, upon receipt of an Issuer Order in connection with a PIK Payment, either, at the Issuer's option, (1) authenticate and deliver any PIK Notes in aggregate principal amount specified in such Issuer Order, or (2) increase the aggregate principal amount of an outstanding global Note in the amount set forth in such Issuer Order. Notwithstanding anything to the contrary herein, only an Issuer Order shall be required to be delivered to the Trustee and no Officer's Certificate or Opinion of Counsel shall be required to be delivered in connection with any PIK Payment (whether by an issuance of PIK Notes or by an increase in the aggregate principal amount of an outstanding global Note as a result of a PIK Payment).

(e) On the Issue Date, the Issuer shall deliver the Initial Notes in the aggregate principal amount of $15,000,000 executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Notes, specifying the principal amount and registered holder of each Note, directing the Trustee to authenticate the Notes and deliver the same to the persons named in such Issuer Order and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Initial Notes. At any time and from time to time after the Issue Date, the Issuer may deliver Additional Notes executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Additional Notes, specifying the principal amount of and registered holder of each Note, directing the Trustee to authenticate the Additional Notes and deliver the same to the Persons named in such Issuer Order and certifying that the issuance of such Additional Notes is in compliance with Section 10.11 of this Indenture and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Additional Notes. In each case, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel of the Issuer as to such matters as it may reasonably require in connection with such authentication of Notes. Such Issuer Order shall specify the amount of Notes to be authenticated and the date on which the original issue of Notes is to be authenticated. Each Note shall be dated the date of its authentication; except that PIK Notes shall be dated as of the Interest Payment Date to which they relate.

(f) No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

(g) In case the Issuer or any Guarantor, pursuant to Article Eight of this Indenture, shall be merged, consolidated or amalgamated with or into or wind up into any other Person or shall sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries, taken as a whole, in case of the Issuer, or all or substantially all of the properties or assets of such Guarantor in case of a Guarantor, to any Person, and the successor Person (other than the Issuer or such Guarantor, as applicable) formed by or surviving any such merger, consolidation or amalgamation or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made, shall have executed a supplemental indenture hereto pursuant to Article Eight of this Indenture, any of the Notes authenticated or delivered prior to such merger, consolidation, amalgamation, sale, assignment, transfer, lease, conveyance or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Issuer Order of the successor Person, shall authenticate and deliver Notes as specified in such request for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.02 in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

ARTICLE THREE

THE NOTES

SECTION 3.01. Title and Terms.

(a) The aggregate principal amount of Notes which may be authenticated and issued under this Indenture is not limited; *provided* that the Issuer may issue from time to time PIK Notes and Additional Notes in accordance with Section 2.02, Section 3.07, Section 3.13, Section 10.11 and the Appendix hereof as part of the same series as the Initial Notes.

(b) The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture, and the Issuer, the Guarantors and the Trustee, by their execution and delivery of 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.

(c) The Notes shall be known and designated as the "Super-Priority Senior Secured PIK Notes Due 2025" of the Issuer.

(d) The Stated Maturity of the principal of Notes shall be December 31, 2025.

(e) Holders shall have the right to require the Issuer to purchase their Notes, in whole or in part, in the event of a Change of Control pursuant to Section 10.16.

(f) The Notes shall be subject to repurchase pursuant to an Asset Sale Offer as provided in Section 10.17.

(g) The Notes shall be redeemable as provided in Article Eleven.

(h) The due and punctual payment of principal of (and premium, if any) and interest on the Notes payable by the Issuer is irrevocably unconditionally guaranteed, to the extent set forth herein, by each of the Guarantors.

(i) For the avoidance of doubt, unless represented by PIK Notes, the aggregate principal amount outstanding under any Note (as reflected in the books and records of the Depository and the Trustee) shall include any increase in the aggregate principal amount of the applicable global Notes as a result of a PIK Payment.

SECTION 3.02. Note Registrar, Transfer Agent and Paying Agent.

(a) The Issuer shall maintain one or more Paying Agents for the Notes. The Issuer hereby appoints the Trustee as the initial Paying Agent.

(b) The Issuer shall be responsible for making calculations called for under the Notes, including but not limited to determination of redemption price or other amounts payable on the Notes. The Issuer shall make the calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Issuer shall provide a schedule of its calculations to the Trustee when requested by the Trustee, and the Trustee is entitled to rely conclusively on the accuracy of the Issuer's calculations without independent verification. The Trustee shall forward the Issuer's calculations to any Holder upon the written request of such Holder.

(c) The Issuer shall also maintain a registrar (the "*Note Registrar*"). The Issuer shall also maintain a transfer agent (each, a "*Transfer Agent*"). The Issuer hereby appoints the Trustee as the initial Note Registrar and Transfer Agent. The Note Registrar and the Transfer Agent shall keep a register of the Notes and of their transfer and exchange (the register maintained in such office or in any other office or agency designated pursuant to Section 10.02 being herein referred to as the "*Note Register*") and shall facilitate transfer of Notes on behalf of the Issuer. The Note Register shall be in written form or any other form capable of being converted into written form within a reasonable time. At all reasonable times, the Note Register shall be open to inspection by the Trustee. The Issuer may change the Paying Agents, the Note Registrars or the Transfer Agents without prior notice to the Holders. The Issuer may have one or more co-registrars and one or more additional paying agents. The term "*Note Registrar*" includes any co-registrars. For the avoidance of doubt, there shall only be one Note Register.

(d) The Issuer shall enter into an appropriate agency agreement with any Note Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee in writing of the name and address of any such agent. If the Issuer fails to maintain a Note Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 6.07. The Issuer or any of its Subsidiaries may act as Paying Agent or Note Registrar.

(e) The Issuer acknowledges that neither the Trustee nor any Agent makes any representations as to the interpretation or characterization of the transactions herein undertaken for tax or any other purpose, in any jurisdiction.

SECTION 3.03. Denominations. The Notes shall be issuable only in registered form without coupons and only in minimum denominations of $1.00 and any integral multiples of $1.00 in excess thereof.

SECTION 3.04. Temporary Notes.

(a) Pending the preparation of definitive Notes, the Issuer may execute, and upon Issuer Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

(b) If temporary Notes are issued, the Issuer shall cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency of the Issuer designated for such purpose pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Notes.

SECTION 3.05. Registration of Transfer and Exchange.

(a) Upon surrender for registration of transfer of any Note at the office or agency of the Issuer designated pursuant to Section 10.02, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations of a like aggregate principal amount.

(b) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

(c) All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

(d) Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Issuer or the Note Registrar) be duly endorsed, or be accompanied by written instruments of transfer, in form satisfactory to the Issuer and the Note Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(e) No service charge shall be made for any registration of transfer or exchange or redemption of Notes, but the Issuer may require payment of a sum sufficient to cover any taxes, fees or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 2.02, Section 3.04, Section 9.05, Section 10.16, Section 10.17, or Section 11.08 not involving any transfer.

SECTION 3.06. Mutilated, Destroyed, Lost and Stolen Notes.

(a) If (1) any mutilated Note is surrendered to the Trustee, or (2) the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Issuer and the Trustee such security or indemnity to save each of them harmless from any claim, loss, cost or liability resulting from such lost or stolen Note, then, in the absence of written notice to the Issuer or the Trustee that such Note has been acquired by a Protected Purchaser (as defined in Section 8-303 of the Uniform Commercial Code) (a "*Protected Purchaser*"), the Issuer shall execute and upon Issuer Order the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 3.06, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 3.06 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer and each Guarantor, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

(e) The provisions of this Section 3.06 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 3.07. Applicable Interest Rate; Payment of Interest; PIK Notes.

(a) The Notes shall bear interest at the rate of 16.00% per annum from the Issue Date (the "*Interest Rate*").

(b) Interest on the Notes will accrue from the Issue Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable on each Interest Payment Date, until the principal thereof is paid or duly provided for and to the Person in whose name the Note (or any Predecessor Note) is registered at the close of business (if applicable) on the March 15, June 15, September 15 and December 15 (whether or not a Business Day) immediately preceding such Interest Payment Date (each, a "*Regular Record Date*"). For the avoidance of doubt, interest payable on the maturity date of the Notes shall be paid prior to the payment of the Notes at maturity pursuant to Section 10.01.

(c) With respect to each Interest Period, the Interest Rate per annum shall be payable by increasing the aggregate principal amount of one or more outstanding global Notes representing the Initial Notes or issuing additional Notes ("*PIK Notes*"), calculated based on the outstanding principal of the Notes as of the beginning of the applicable Interest Period rounded down to the nearest $1.00.

(1) In connection with a PIK Payment in respect of the Notes, the Issuer shall, without the consent of Holders (and without regard to any restrictions or limitations set forth under Section 10.11), either increase the aggregate principal amount of an outstanding global Note in the amount of PIK Interest or issue PIK Notes under this Indenture. Pursuant to Section 2.02, Section 3.07 and the Appendix, in order to make a PIK Payment, the Issuer shall deliver to the Trustee either, as applicable, (i) an Issuer Order to increase the aggregate principal amount of an outstanding global Note in the amount of the PIK Interest due as set forth in such Issuer Order, or (ii) PIK Notes duly executed by the Issuer together with an Issuer Order pursuant to Section 2.02 and the Appendix requesting the authentication of such PIK Notes by the Trustee in the amount of the PIK Interest due as set forth in such Issuer Order. PIK Notes, if any, shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise (other than issue date, issue price and, if applicable, the first interest payment date and the first date from which interest will accrue) as the Initial Notes.

(2) On any Interest Payment Date on which the Issuer makes a PIK Payment by increasing the aggregate principal amount of an outstanding global Note, the Trustee, or the Depository at the direction of the Trustee, shall increase the outstanding aggregate principal amount of such global Note by an amount equal to the PIK Interest payable, rounded down to the nearest whole dollar, for the relevant Interest Period on the principal amount of such global Note, to the credit of the Holders on the relevant Regular Record Date and an adjustment will be made on the register maintained with the Notes Registrar with respect to such global Note to reflect such increase and thereafter shall be part of the outstanding principal amount of the Notes for all purposes of this Indenture, the Security Documents and the First Lien/Second Lien Intercreditor Agreement. For the avoidance of doubt, (i) following the increase in the aggregate principal amount of any outstanding global Note as a result of a PIK Payment, such global Note will bear interest on such increased aggregate principal amount from and after the date of such PIK Payment at the rate applicable to the Notes in the manner set forth in this Section 3.07 and (ii) all references to principal amount of such Note shall refer to such increased aggregate principal amount.

(3) Any PIK Notes issued in certificated form shall be issued in an aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded down to the nearest whole dollar), shall be dated as of the applicable Interest Payment Date and will bear interest from and after such date. The Trustee shall authenticate and deliver the PIK Notes in certificated form for original issuance to the Holders on the relevant record date as set forth in an Issuer Order. All PIK Notes issued pursuant to a PIK Payment will mature on the maturity date and will be governed by, and subject to the terms, provisions and conditions of, this Indenture and shall have the same rights and benefits as the Notes issued on the Issue Date. Any certificated PIK Notes shall be issued with the description "PIK" on the face of such PIK Note, but shall be treated for all purposes under this Indenture with the same rights and obligations as the Notes.

(d) The principal of, premium (including the Exit Premium), if any, and interest on the Notes shall be payable at the offices or agencies of the Issuer maintained for such purpose as set forth in Section 3.02 and the Appendix, may be made by check mailed to the Holders at their respective addresses set forth in the Note Register of Holders or by wire transfer; *provided* that all payments of principal, and premium (including the Exit Premium) with respect to the Notes represented by one or more global Notes registered in the name of or held by the Depository or its nominee shall be made in accordance with the Depository's applicable procedures.

(e) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Note (or one or more Predecessor Notes) is registered at the close of business (if applicable) on the Regular Record Date for such interest at the office or agency of the Issuer maintained for such purpose pursuant to Section 10.02; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of, and premium (including the Exit Premium) on, all Notes in global form and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuer and the Paying Agent; *provided* that for Notes not in global form, the Paying Agent shall have received from the Holders satisfactory wire transfer instructions at least ten calendar days prior to the related payment date and subject to surrender of the Note in the case of payments of principal and premium, if any. Notwithstanding anything to the contrary herein, PIK Interest shall be paid in accordance with Section 3.07 and the Appendix.

(f) Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date shall forthwith cease to be payable to the Holder on the Regular Record Date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called "*Defaulted Interest*") may be paid by the Issuer, at its election in each case, as provided in clause (1) or clause (2) below:

(1) the Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The 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 Issuer shall deposit with the Trustee an amount of money (other than with respect to a PIK Payment) equal to the aggregate amount proposed to be paid in cash 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 clause (1). Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than ten days prior to the date of the proposed payment and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Issuer shall promptly notify the Trustee of such Special Record Date, and in the name and at the expense of the Issuer, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given in the manner provided for in Section 1.07, not less than ten days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so given, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to Section 3.07(f)(2).

(2) the Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Issuer to the Trustee of the proposed payment pursuant to this Section 3.07(f)(2), such manner of payment shall be deemed practicable by the Trustee.

(g) Subject to the foregoing provisions of this Section 3.07, 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.

(h) Notwithstanding anything to the contrary, any accrued and unpaid interest on the maturity date (including, for the avoidance of doubt, the Exit Premium) or required to be paid in connection with any redemption of the Notes as described under Section 11.01, in connection with any repurchase of the Notes pursuant to Section 10.16 and Section 10.17, or in connection with an acceleration of the Notes pursuant to Article Five, shall be payable entirely in cash.

(i) The Issuer shall be responsible for making all calculations called for under the Notes, including but not limited to determination of redemption price, premium (including the Exit Premium), if any, interest, determination of how much interest shall be payable as PIK Interest and any additional amounts or other amounts payable on the Notes. The Issuer shall make the calculations in reasonable detail and in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Trustee shall have no duty to calculate or verify the Issuer's calculations under the Notes and this Indenture.

SECTION 3.08. Persons Deemed Owners. Prior to the due presentment of a Note for registration of transfer, the Issuer, any Guarantor, the Trustee and any agent of the Issuer or the Trustee may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.05 and Section 3.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, any Guarantor, the Trustee or any agent of the Issuer or the Trustee shall be affected by notice to the contrary.

SECTION 3.09. Cancellation.

(a) All Notes surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be cancelled by the Trustee in accordance with its customary procedures.

(b) The Issuer may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Notes previously authenticated hereunder which the Issuer has not issued and sold, and all Notes so delivered shall be cancelled by the Trustee in accordance with its customary procedures.

(c) If the Issuer shall so acquire any of the Notes, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation.

(d) No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 3.09, except as expressly permitted by this Indenture.

(e) All cancelled Notes held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures.

SECTION 3.10. Computation of Interest. Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.11. Transfer and Exchange.

(a) The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer.

(b) When a Note is presented to the Note Registrar or a co-registrar with a request to register a transfer, the Note Registrar shall register the transfer as requested if the requirements of this Indenture and Section 8-401(a) of the Uniform Commercial Code are met.

(c) When Notes are presented to the Note Registrar or a co-registrar with a request to exchange them for an equal principal amount of Notes of other denominations, the Note Registrar shall make the exchange as requested if the same requirements are met.

SECTION 3.12. CUSIP Numbers and ISINs. In issuing the Notes, the Issuer may use a number issued by the Committee on Uniform Securities Identification Procedures (a "*CUSIP number*") and an international securities identification number (an "*ISIN*"), in each case, if then generally in use, in addition to serial numbers, and, if so, the Trustee shall use such CUSIP numbers and ISINs in addition to serial numbers in notices of redemption, repurchase or other notices to Holders as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such CUSIP numbers and ISINs either as printed on the Notes or as contained in any notice of a redemption or repurchase and that reliance may be placed only on the serial or other identification numbers printed on the Notes, and any such redemption or repurchase shall not be affected by any defect in or omission of such numbers. The Issuer shall promptly notify the Trustee in writing of any change in the CUSIP numbers and ISINs applicable to the Notes.

SECTION 3.13. Issuance of Additional Notes.

(a) The Issuer may, subject to Section 10.11 of this Indenture, issue additional Notes having identical terms and conditions to the Initial Notes issued on the Issue Date (the "*Additional Notes*"), except, if applicable, the initial Interest Payment Date and the initial interest accrual date.

(b) The Initial Notes issued on the Issue Date, the PIK Notes and any Additional Notes subsequently issued shall be treated as a single class for all purposes under this Indenture, including waivers, amendments, redemptions and offers to purchase; *provided* 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.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 4.01. Satisfaction and Discharge of Indenture.

(a) This Indenture shall be discharged and cease to be of further effect (except for certain surviving rights of the Trustee and the Notes Collateral Agent) as to all Notes under this Indenture, the Guarantees and the Liens on the Collateral securing the Notes will be released, and the Trustee, at the request and expense of the Issuer, shall execute such instruments acknowledging satisfaction and discharge of this Indenture when:

(1) either:

(A) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06, and (ii) Notes for whose payment money has theretofore been deposited in trust with the Trustee or any Paying Agent or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(B) all such 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 may be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer 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, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts (including scheduled payments thereon) as will be sufficient (without consideration of any reinvestment of interest) to pay and discharge the

entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and accrued interest to the Stated Maturity or Redemption Date, as the case may be;

(2) no Default or 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 or 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 shall not result in a breach or violation of, or constitute a default under any material agreement or material instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (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);

(3) the Issuer has paid or caused to be paid all sums payable by it under this Indenture;

(4) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of such Notes at the Stated Maturity or the Redemption Date, as the case may be; and

(5) the Issuer has delivered to the Trustee and the Notes Collateral Agent 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 herein to the satisfaction and discharge of this Indenture have been satisfied. Such Opinion of Counsel may rely on such Officer's Certificate as to matters of fact, including clauses (1), (2), (3), and (4) above.

(b) Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee and the Notes Collateral Agent under Section 6.07 and Section 14.08(dd), the obligations of the Issuer to any Authenticating Agent under Section 6.12 and, if money or Government Securities shall have been deposited with the Trustee pursuant to Section 4.01(a)(1)(B), the obligations of the Trustee under Section 4.02 and Section 10.03(e) shall survive such satisfaction and discharge.

SECTION 4.02. Application of Trust Money.

(a) Subject to the provisions of Section 10.03(e), all money or Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 4.01 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 the Issuer acting as its own Paying Agent) of the principal (and premium, if any) and interest for whose payment such money or Government Securities has been deposited with the Trustee; but such money or Government Securities need not be segregated from other funds except to the extent required by law.

(b) The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Securities deposited pursuant to this Section 4.02 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. The Trustee shall also deliver to the Issuer from time to time upon Issuer Request any money or Government Securities held by it which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent satisfaction and discharge, as applicable, in accordance with Article Four.

(c) If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 4.01 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, the 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 4.01 until such time as the Trustee or Paying Agent is permitted to apply all such money or Government Securities in accordance with Section 4.01; *provided* that if the Issuer has made any payment of principal of (and premium, if any) or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE FIVE

REMEDIES

SECTION 5.01. Events of Default.

(a) "*Event of Default*" means, wherever used herein, any one of the following events:

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium (including the Exit Premium), if any, on the Notes;

(2) default for 30 days or more in the payment when due of interest on or with respect to the Notes;

(3) failure by the Issuer or any Guarantor for 30 days after receipt of written notice given by the Trustee or the Required Holders (with a copy to the Trustee) to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) or (2) above) contained in this Indenture or the Notes; *provided* that (x) in the case of a failure to comply with Section 10.09, such period of continuance of such default or breach shall be 60 days after written notice described in this clause (3) has been given and (y) in the case of a failure to comply with Section 10.06, such period of continuance of such default or breach shall be 5 days after written notice described in this clause (3) has been given;

(4) 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 Issuer or any of the Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of the Restricted Subsidiaries (other than Indebtedness owed to the 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 final 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, is, in the aggregate, in excess of $2.5 million;

(5) failure by the Issuer or any Restricted Subsidiary to pay final judgments aggregating in excess of $2.5 million (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not denied its obligation), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final and non-appealable, 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;

(6) any of the following events with respect to the Issuer, any Guarantor or any other Significant Subsidiary:

(A) the Issuer, any Guarantor or any other Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property;

(iv) takes any comparable action under any foreign laws relating to insolvency; or

(B) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer, any Guarantor or any other Significant Subsidiary in an involuntary case;

(ii) appoints a custodian of the Issuer, any Guarantor or any other Significant Subsidiary or for all or substantially all of its property; or

(iii) orders the winding up or liquidation of the Issuer, any Guarantor or any other Significant Subsidiary; and

(iv) the order or decree remains unstayed and in effect for 60 days; or

(7) the Guarantee of any Guarantor shall for any reason cease to be in full force and effect (except as contemplated by the terms of this Indenture) or be declared null and void or any responsible officer of any Guarantor 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; or

(8) (A) any Security Document ceases to be in full force and effect or is declared null and void,

(B) the Liens created by the Security Documents shall at any time not constitute a valid and perfected first-priority Lien (subject, as to priority, to Permitted Liens (1) that, by operation of law, rank pari passu or senior to the Liens created by the Security Documents and (2) under clause (11) of the definition of "Permitted Liens", to the extent of the assets secured thereby) on any material portion of the Collateral intended to be covered thereby (unless perfection is not required by this Indenture or the Security Documents) other than:

(i) in accordance with the terms of the relevant Security Document or this Indenture;

(ii) the satisfaction in full of all Obligations under this Indenture; or

(iii) 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; or

(C) the Issuer or any Subsidiary shall assert, in any pleading in any court of competent jurisdiction, that any security interest in any Security Document is invalid or unenforceable;

provided that, if a failure of the sort described in this Section 5.01(a)(8) is susceptible of cure (including with respect to any loss of Lien priority on material portions of the Collateral), no Event of Default shall arise under this Section 5.01(a)(8) with respect thereto until, and in each case of clauses (A) and (B) of this Section 5.01(a)(8), any such default continues for 30 days after receipt of written notice given by the Trustee or the Required Holders.

SECTION 5.02. Acceleration of Maturity: Rescission and Annulment.

(a) If any Event of Default (other than an Event of Default specified in Section 5.01(a)(6) above) occurs and is continuing under this Indenture, the Trustee or the Required Holders may declare the principal, premium (including the Exit Premium), if any, interest and any other monetary obligations on all the Outstanding Notes to be due and payable immediately, by a notice in writing to the Issuer (and to the Trustee if given by Holders).

(b) Upon the effectiveness of a declaration under Section 5.02(a), such principal, premium (including the Exit Premium), if any, and interest will be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under

Section 5.01(a)(6), all Outstanding Notes will become due and payable without further action or notice. In addition, the Trustee shall have no obligation to accelerate the Notes if in the reasonable judgment of the Trustee acceleration is not in the best interest of the Holders.

(c) At any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article, the Required Holders, by written notice to the Issuer and the Trustee, may rescind and annul such declaration and its consequences, so long as such rescission and annulment would not conflict with any judgment of a court of competent jurisdiction; *provided*, *further*, the Trustee and the Notes Collateral Agent have been paid any amounts incurred by them in connection with such Event of Default, if:

(1) the Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue interest on all Outstanding Notes;

(B) all unpaid principal of (and premium, if any, on) any Outstanding Notes which has become due otherwise than by such declaration of acceleration, and interest on such unpaid principal at the rate borne by the Notes;

(C) to the extent that payment of such interest is lawful, interest on overdue interest at the rate borne by the Notes; and

(D) all sums paid or advanced by the Trustee or Notes Collateral Agent hereunder or under the Security Documents and the reasonable compensation, expenses, disbursements and advances of the Trustee, the Notes Collateral Agent, their agents and counsel; and

(2) Events of Default, other than the non-payment of amounts of principal of (or premium, if any, on) or interest on Notes, which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13;

provided that no such rescission shall affect any subsequent default or impair any right consequent thereon.

(d) Notwithstanding Section 5.02(c), in the event of any Event of Default specified in Section 5.01(a)(4), 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 20 days after such Event of Default arose:

(1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(2) the requisite holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(3) the default that is the basis for such Event of Default has been cured.

(e) Without limiting the generality of the foregoing, if the Notes are accelerated as a result of an Event of Default (including, but not limited to Section 5.01(a)(6) or upon the occurrence or commencement of any bankruptcy or insolvency proceeding or other event pursuant to any applicable Bankruptcy Law (including the acceleration of claims by operation of law)), the Notes that become due and payable shall include the Exit Premium, which shall become immediately due and payable by the Issuer and the Guarantors and shall constitute part of the Notes Obligations as if the Notes were being optionally redeemed or repaid as of such date, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a good faith reasonable estimate and calculation of each beneficial holder's lost profits and/or actual damages as a result thereof. The Exit Premium shall also be automatically and immediately due and payable if the Notes Obligations are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure, or by any other means in connection with an Event of Default described in the preceding sentence, including without limitation, under a plan of reorganization or similar manner in any bankruptcy, insolvency or similar proceeding. The Exit Premium payable pursuant to this Indenture shall be presumed to be the liquidated damages sustained by

each beneficial holder as the result of the early repayment or prepayment of the Notes (and not unmatured interest or a penalty) and the Issuer and the Guarantors agree that it is reasonable under the circumstances currently existing.

(f) If the Exit Premium becomes due and payable pursuant to this Indenture, the Exit Premium shall be deemed to be principal of the Notes and Obligations under this Indenture and interest shall accrue on the full principal amount of the Notes (including the Exit Premium). In the event the Exit Premium is determined not to be due and payable by order of any court of competent jurisdiction, including, without limitation, by operation of the Bankruptcy Law, the Exit Premium shall nonetheless constitute Notes Obligations under this Indenture for all purposes thereunder.

(g) (1) THE ISSUER AND THE GUARANTORS EXPRESSLY WAIVE (TO THE FULLEST EXTENT THEY MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE EXIT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION.

(2) The Issuer and the Guarantors expressly acknowledge and agree (to the fullest extent they may lawfully do so) that:

(A) the Exit Premium is reasonable and the product of an arm's-length transaction between sophisticated business people, ably represented by counsel;

(B) the Exit Premium shall each be payable under the circumstances described herein notwithstanding the then prevailing market rates at the time payment or redemption is made;

(C) there has been a course of conduct between the beneficial holders, the Issuer and the Guarantors giving specific consideration in this transaction for such agreement to pay the Exit Premium under the circumstances described herein;

(D) the Exit Premium shall not constitute unmatured interest, whether under section 502(b) of the Bankruptcy Code or otherwise;

(E) the Exit Premium does not constitute a penalty or an otherwise unenforceable or invalid obligation;

(F) the Issuer and the Guarantors shall not challenge or question, or support any other person in challenging or questioning, the validity or enforceability of the Exit Premium or any similar or comparable prepayment fee under the circumstances described herein, and the Issuer and the Guarantors shall be estopped from raising or relying on any judicial decision or ruling questioning the validity or enforceability of any prepayment fee similar or comparable to the Exit Premium; and

(G) the Issuer and the Guarantors shall be estopped hereafter from claiming differently than as agreed to in this Section 5.02(g).

(3) The Issuer and the Guarantors expressly acknowledge that its agreement to pay or guarantee the payment of the Exit Premium to the beneficial holders as herein described are individually and collectively a material inducement to the beneficial holders to purchase the Notes. Any reference to "par" will include any Exit Premium or accrued and unpaid interest that is added to principal theretofore so added.

(4) The parties to this Indenture acknowledge that the Exit Premium provided for under this Indenture is believed to represent a genuine estimate of the losses that would be suffered by the beneficial holders as a result of the Issuer's and the Guarantors' breach of its obligations under this Indenture.

(5) The Issuer and the Guarantors waive, to the fullest extent permitted by law, the benefit of any statute affecting its liability hereunder or the enforcement hereof.

SECTION 5.03. Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Issuer covenants that if:

(1) default is made in the payment of any installment of interest on any Note when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Note at the Maturity thereof, the Issuer shall, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal (and premium, if any) and interest, and interest on any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, at the rate borne by the Notes, and, in addition thereto, 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.

(b) If the Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Issuer, any Guarantor or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer, any Guarantor or any other obligor upon the Notes, wherever situated.

(c) If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders under this Indenture and the Guarantees by such appropriate judicial proceedings as the Trustee shall deem necessary to protect and enforce any such rights, including seeking recourse against any Guarantor, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including seeking recourse against any Guarantor.

SECTION 5.04. Trustee May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer or any other obligor including any Guarantor, upon the Notes or the property of the Issuer or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Notes Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Notes Collateral Agent, their agents and counsel) and of the Holders allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official 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 the Trustee any amount due it for the reasonable compensation, expenses,

disbursements and advances of the Trustee, the Notes Collateral Agent, their agents and counsel, and any other amounts due the Trustee or the Notes Collateral Agent under Section 6.07 and Section 14.08(dd).

(b) 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 thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' committee or other similar committee.

SECTION 5.05. Trustee May Enforce Claims Without Possession of Notes. All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

SECTION 5.06. Application of Money Collected.

(a) Any money or property collected by the Trustee pursuant to this Article Five shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(1) FIRST: To the payment of all amounts due the Trustee, the Notes Collateral Agent (including any predecessor Trustee or Notes Collateral Agent) and any other Agent under Section 6.07 and Section 14.08(dd);

(2) SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal (and premium, if any) and interest, respectively; and

(3) THIRD: The balance, if any, to the Issuer or as a court of competent jurisdiction may direct in writing; *provided* that all sums due and owing to the Holders and the Trustee or Notes Collateral Agent have been paid in full as required by this Indenture.

(b) The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 5.06.

SECTION 5.07. Limitation on Suits. Subject to the First Lien/Second Lien Intercreditor Agreement, except to enforce the right to receive payment of principal, premium (including the Exit Premium), if any, or interest when due, no Holder shall 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) Required Holders have requested the Trustee in writing to pursue the remedy;

(c) Holders have offered and, if requested, provided to the Trustee indemnity or security satisfactory to the Trustee 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 or indemnity; and

(e) the Required Holders have not given the Trustee a direction inconsistent with such request within such 60-day period,

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority

or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders (it being further understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to any Holder).

SECTION 5.08. Right of Holders to Bring Suit for Payment. Subject to Section 10.16 and Section 10.17, the right of any Holder of any Outstanding Note to bring suit for the enforcement of any payment of principal of, premium, if any, and interest on such Note, on or after the respective Maturity expressed in such Note (including in connection with an Asset Sale Offer or a Change of Control Offer), shall not be impaired or affected without the consent of such Holder.

SECTION 5.09. Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture or the Guarantees 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 proceeding, the Issuer, any Guarantor, any other obligor of the Notes, 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 had been instituted.

SECTION 5.10. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 3.06(e), 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 5.11. Delay or Omission Not Waiver. No delay or omission of the Trustee, the Notes Collateral Agent 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 Five or by law to the Trustee, the Notes Collateral Agent or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Notes Collateral Agent or by the Holders, as the case may be.

SECTION 5.12. Control by Holders. Subject to the First Lien/Second Lien Intercreditor Agreement and certain other restrictions in this Indenture, the Required Holders shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Notes Collateral Agent, as applicable, or of exercising any trust or power conferred on the Trustee or the Notes Collateral Agent, as applicable. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or would involve the Trustee in personal liability (it being understood that the Trustee does not have an affirmative duty to determine whether any actions are prejudicial to any Holder). The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 5.13. Waiver of Past Defaults.

(a) The Required Holders by notice to the Trustee may on behalf of the Holders of all the Notes waive any existing Default or Event of Default and its consequences under this Indenture (except (1) a continuing Default or Event of Default in the payment of interest on, premium (including the Exit Premium), if any, or the principal of any such Note held by a non-consenting Holder, or (2) in respect of a covenant or provision hereof or in any Guarantee which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Note affected which shall require the consent of all Holders of the Notes) and rescind any acceleration and its consequences with respect to the Notes; *provided* such rescission would not conflict with any judgment of a court of competent jurisdiction; *provided*, *further*, the Trustee and the Notes Collateral Agent have been paid any amounts incurred by them in connection with such Event of Default.

(b) 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, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 5.14. Waiver of Stay or Extension Laws. Each of the Issuer, the Guarantors and any other obligor on the Notes covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Issuer, the Guarantors and any other obligor on the Notes (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it shall not 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 had been enacted.

SECTION 5.15. Undertaking for Costs.

(a) 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 attorney's 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.

(b) This Section 5.15 does not apply to a suit by the Trustee, a suit by a Holder relating to right to payment hereof, or a suit by Holders of more than 10% in principal amount of the then Outstanding Notes.

ARTICLE SIX

THE TRUSTEE

SECTION 6.01. Duties of the Trustee.

(a) Except during the continuance of an Event of Default actually known to a Responsible Officer of the Trustee,

(1) the Trustee and the Notes Collateral Agent undertake to perform such respective duties and only such duties as are specifically set forth in this Indenture and the Security Documents, as applicable, and no implied covenants or obligations shall be read into this Indenture or the Security Documents, as applicable, against the Trustee or the Notes Collateral Agent; and

(2) in the absence of bad faith, gross negligence or willful misconduct 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; but in the case of any such certificates or opinions specifically required by any provision hereof to be provided to it, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but not to verify the contents thereof including the accuracy of any mathematical calculations.

(b) If an Event of Default has occurred and is continuing of which a Responsible Officer has actual knowledge or of which written notice of such Event of Default shall have been given to a Responsible Officer by the Issuer, any other obligor of the Notes or by Required Holders, 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 their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this Section 6.01(c) shall not be construed to limit the effect of Section 6.01(a);

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Required Holders relating to the time, method and place of conducting any proceeding for

any remedy available to the Trustee or the Notes Collateral Agent, or exercising any trust or power conferred upon the Trustee or the Notes Collateral Agent, under this Indenture; and

(4) no provision of this Indenture shall require either the Trustee or the Notes Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers vested in it by this Indenture, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

SECTION 6.02. Notice of Defaults.

(a) If a Default or Event of Default occurs and is continuing of which a Responsible Officer of the Trustee has received written notice, the Trustee shall transmit to the Holders notice of such Default or Event of Default hereunder known to the Trustee, unless such Default or Event of Default shall have been cured or waived; *provided* that, except in the case of a Default or Event of Default in the payment of the principal of (or premium (including the Exit Premium), if any, on) or interest on any Note, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the best interest of the Holders.

(b) Any notice of Default, notice of acceleration or instruction to the Trustee or the Notes Collateral Agent to provide a notice of Default, notice of acceleration or take any other action (a "*Noteholder Direction*") provided by any one or more Holders of the Notes (each a "*Directing Holder*") must be accompanied by a written representation substantially in the form of Exhibit C hereto from each such Holder to the Issuer, the Trustee and the Notes Collateral Agent, if applicable, that such Holder is not (or, in the case such Holder is the Depository or its nominee, that such Holder is being instructed solely by beneficial owners that are not) Net Short (a "*Position Representation*"), which representation, in the case of a Noteholder Direction relating to a notice of Default shall be deemed repeated at all times until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder must, at the time of providing a Noteholder Direction, covenant to provide the Issuer with such other information as the Issuer may reasonably request from time to time in order to verify the accuracy of such Holder's Position Representation within five Business Days of request therefor (a "*Verification Covenant*"). In any case in which the Holder is the Depository or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of such Notes in lieu of the Depository or its nominee.

(c) If, following the delivery of a Noteholder Direction, but prior to the acceleration of the Notes, the Issuer determines in good faith that there is a reasonable basis to believe that a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee and the Notes Collateral Agent, if applicable, an Officer's Certificate stating that the Issuer has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Event of Default that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to the acceleration of the Notes, the Issuer provides to the Trustee and the Notes Collateral Agent, if applicable, an Officer's Certificate that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such Holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such Holder, the percentage of the Notes held by the remaining Holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio (other than indemnity offered to the Trustee and the Notes Collateral Agent), with the effect that such Event of Default with respect to the Notes shall be deemed never to have occurred, acceleration voided and the Trustee shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

(d) Notwithstanding anything in this Section 6.02 to the contrary, any Noteholder Direction with respect to the Notes delivered to the Trustee or the Notes Collateral Agent during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with Section 6.02(c).

(e) For the avoidance of doubt, notwithstanding this Section 6.02, the Trustee and the Notes Collateral Agent shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with this Indenture, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise; and will be fully protected for any actions taken (or not taken) pursuant to such Noteholder Direction under this Indenture even if such Holder's holdings are later disregarded because of a breach of, or failure to comply with, the Position Representation or Verification Covenant. Neither the Trustee nor the Notes Collateral Agent shall have any liability to the Issuer, any Holder or any other Person in acting in good faith on a Noteholder Direction.

SECTION 6.03. Certain Rights of Trustee.

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order and any resolution of the Board may be sufficiently evidenced by a Board Resolution certified by the Secretary or an Assistant Secretary of the Issuer to have been duly adopted by the Board of the Issuer and to be in full force and effect on the date of such certification, and delivered to the Trustee.

(c) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officer's Certificate or Opinion of Counsel.

(d) The Trustee shall not be charged with knowledge of any fact, Default or Event of Default with respect to the Notes unless either (i) a Responsible Officer has received written notice of such fact, Default or Event of Default, or (ii) written notice of such fact, Default or Event of Default shall have been received by a Responsible Officer from the Issuer, any other obligor of the Notes or from Required Holders and references this Indenture and the Notes. Delivery of any reports to the Trustee pursuant to Section 10.09 shall not constitute knowledge of, or notice to, the Trustee of the information contained therein.

(e) The Trustee may consult with counsel, accountants, bankers or other relevant experts of its own selection and the advice of such counsel, accountants, bankers or other relevant expert or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice or opinion of such counsel or Opinion of Counsel.

(f) Neither the Trustee nor the Notes Collateral Agent shall be under any obligation to exercise any of the rights or powers vested in them by this Indenture or the Security Documents at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered, and if requested, provided to the Trustee and Notes Collateral Agent, as applicable, security or indemnity satisfactory to the Trustee and the Notes Collateral Agent, as applicable, against any loss, liability or expense with respect to such exercise.

(g) 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, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or inquire as to the performance by the Issuer or the Guarantors of any of their covenants in this Indenture or inquire as to the performance by the Issuer or the Guarantors of any of their covenants in this Indenture, 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 Issuer, personally or by agent or attorney at the expense of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation.

(h) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder or any other Note Document (including the First Lien/Second Lien Intercreditor Agreement) either directly or by or through agents, subagents, nominees, collateral trustees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, subagent, nominee, collateral trustees or attorney appointed with due care by it hereunder.

(i) The Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder whether as an Agent or otherwise, and each agent, custodian and other Person employed to act hereunder, including the Notes Collateral Agent (even if such rights, privileges, protections, immunities and benefits are not set forth in Article Fourteen); *provided however*, that during the continuance of an Event of Default, only the Trustee, and not any Agent, shall be subject to the prudent person standard.

(k) The Trustee may request that the Issuer deliver an incumbency certificate substantially in the form of Exhibit B hereto setting forth the names of individuals or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which such incumbency 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.

(l) The Trustee shall not be required to give any note, bond or surety in respect of the execution of the trusts and powers under this Indenture.

(m) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemic, epidemic, and interruptions, loss or malfunction of utilities, third-party communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances.

(n) The permissive rights, powers and authorizations of the Trustee to take actions permitted by this Indenture and the other Note Documents shall not be construed as an obligation or duty to do so.

(o) If at any time the Trustee is served with any arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process which in any way affects this Indenture, the Notes, the Collateral or any part thereof or funds held by it (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions), it shall be authorized to comply therewith in any manner as it reasonably determines necessary, after consulting with counsel, and if the Trustee complies with any such arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, award, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(p) The Trustee shall not be liable for any indirect, special, punitive, incidental or consequential damages (including, but not limited to, lost profits) whatsoever, even if they have been informed of the likelihood thereof and regardless of the form of action.

SECTION 6.04. Trustee Not Responsible for Recitals or Issuance of Notes.

(a) The recitals contained herein, the Guarantees, the Security Documents, and in the Notes, except for the Trustee's certificates of authentication, shall be taken as the statements of the Issuer, and neither the Trustee nor any Agent assumes responsibility for their correctness.

(b) Neither the Trustee nor any Agent makes representations as to the validity or sufficiency of this Indenture, the Guarantees, the Security Documents, or of the Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder.

(c) Neither the Trustee nor any Agent shall be accountable for the use or application by the Issuer of Notes or the proceeds thereof or any other documents used in connection with the sale or distribution of the Notes.

SECTION 6.05. May Hold Notes. The Trustee, the Notes Collateral Agent, any Paying Agent, any Note Registrar or any other agent of the Issuer or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Trustee, the Notes Collateral Agent, Paying Agent, Note Registrar or such other agent; *provided* that, if it acquires any conflicting interest (as such term is defined in the TIA), it must eliminate such conflict within 90 days or resign as Trustee.

SECTION 6.06. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Issuer.

SECTION 6.07. Compensation and Reimbursement.

(a) The Issuer and the Guarantors, jointly and severally, agree:

(1) to pay to the Trustee from time to time such compensation as shall be agreed in writing between the Issuer and the Trustee for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture and the other Note Documents (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by its own gross negligence or willful misconduct; and

(3) to indemnify the Trustee and any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense, including taxes (other than the taxes based on the income of the Trustee) incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, the Collateral, this Indenture and the other Note Documents, including the reasonable costs and expenses of defending itself against any claim regardless of whether the claim is asserted by the Issuer, a Guarantor, a Holder or any other Person or liability in connection with the exercise or performance of any of its powers or duties hereunder and under the other Note Documents, including the reasonable costs and expenses of enforcing this Indenture, including the indemnifications provided herein, the Security Documents, or a Guarantee against the Issuer or a Guarantor (including this Section 6.07).

(b) The obligations of the Issuer and the Guarantors under this Section 6.07 to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and resignation or removal of the Trustee. As security for the performance of such obligations of the Issuer, the Trustee shall have a lien prior to the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust solely for the benefit of the Holders entitled thereto for the payment of principal of (and premium, if any) or interest on particular Notes.

(c) Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(a)(6), the expenses (including the reasonable charges and expenses of its counsel) of and the compensation for such services are intended to constitute expenses of administration under any applicable Bankruptcy Law. “Trustee” for the purposes of this Section 6.07 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder as permitted by this Indenture; *provided*, *however*, that the negligence or willful misconduct of any predecessor Trustee hereunder shall not affect the rights of any other successor Trustee hereunder (other than a successor Trustee that is successor by merger or consolidation to such predecessor Trustee).

(d) The provisions of this Section 6.07 shall survive the satisfaction and discharge of this Indenture and resignation or removal of the Trustee.

SECTION 6.08. Corporate Trustee Required; Eligibility.

(a) There shall be at all times a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a)(1) and shall have a combined capital and surplus of at least $50.0 million.

(b) If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of federal, State, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 6.08, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(c) If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.08, it shall resign immediately in the manner and with the effect hereinafter specified in this Article Six.

SECTION 6.09. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.10.

(b) The Trustee may resign at any time by giving written notice thereof to the Issuer. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee by written instrument, a copy of which shall be delivered to the resigning Trustee and a copy to the successor Trustee. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Required Holders, delivered to the Trustee and to the Issuer. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Issuer shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Required Holders delivered to the Issuer and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Issuer. If no successor Trustee shall have been so appointed by the Issuer or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) The Issuer shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Holders in the manner provided for in Section 1.07. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 6.10. Acceptance of Appointment by Successor.

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to its lien, if any, provided for in Section 6.07, execute and deliver an instrument transferring to such successor Trustee all the

rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

(b) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article Six.

SECTION 6.11. Merger, Conversion, Consolidation or Succession to Business.

(a) Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; *provided* such entity shall be otherwise eligible under this Article Six, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(b) In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

(c) In case at that time any of the Notes shall not have been authenticated, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee.

(d) In all such cases such certificates shall have the full force and effect which this Indenture provides for the certificate of authentication of the Trustee shall have; *provided* that, the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 6.12. Appointment of Authenticating Agent.

(a) At any time when any of the Notes remain Outstanding, the Trustee may appoint one or more agents (each, an "*Authenticating Agent*") with respect to the Notes which shall be authorized to act on behalf of the Trustee to authenticate Notes and the Trustee shall give written notice of such appointment to all Holders of Notes with respect to which such Authenticating Agent shall serve, in the manner provided for in Section 1.07. Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by an authorized signatory of the Trustee, and a copy of such instrument shall be promptly furnished to the Issuer. Wherever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Issuer.

(b) Any entity into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any entity succeeding to all or substantially all the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent; *provided* such entity shall be otherwise eligible under this Section 6.12, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Issuer. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Issuer. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent

shall cease to be eligible in accordance with the provisions of this Section 6.12, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall give written notice of such appointment to all Holders of Notes, in the manner provided for in Section 1.07. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.12.

(d) The Issuer agrees to pay to each Authenticating Agent from time to time such compensation for its services under this Section 6.12 as shall be agreed in writing between the Issuer and such Authenticating Agent.

(e) If an appointment is made pursuant to this Section 6.12, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Notes referred to in the within-mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

Date: _____ By: _____
as Authenticating Agent

By: _____
Authorized Signatory

SECTION 6.13. Security Documents; Intercreditor Agreement.

(a) By their acceptance of the Notes, the Holders hereby consent to the terms of, and authorize and direct the Trustee and the Notes Collateral Agent, as the case may be, to execute, deliver and perform all of its express duties provided for in the First Lien/Second Lien Intercreditor Agreement (including by way of joinder) and each other Security Document, including any Security Documents executed and delivered after the Issue Date.

(b) 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/Second Lien Intercreditor Agreement or any other Security Documents, the Trustee and the Notes Collateral Agent shall have all of the rights, privileges, protections, immunities, indemnities, benefits 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).

ARTICLE SEVEN

HOLDERS LISTS AND REPORTS BY TRUSTEE AND ISSUER

SECTION 7.01. Issuer to Furnish Trustee Names and Addresses. The Issuer shall furnish or cause to be furnished to the Trustee:

(a) semiannually, not more than ten days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(b) at such other times as the Trustee may reasonably request in writing, within 30 days after receipt by the Issuer of any such request, a list of similar form and content to that in clause (a) hereof as of a date not more than 15 days prior to the time such list is furnished;

provided that, if and so long as the Trustee shall be a Note Registrar, no such list need be furnished.

ARTICLE EIGHT

MERGER, CONSOLIDATION, AMALGAMATION OR SALE OF ALL OR SUBSTANTIALLY ALL ASSETS

SECTION 8.01. Issuer May Consolidate, Etc., Only on Certain Terms.

(a) The Issuer shall not merge, consolidate or amalgamate with or into or wind up into (whether or not the Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to any Person unless:

(1) the Issuer is the surviving Person or the Person formed by or surviving any such merger, consolidation or amalgamation (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof or the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "*Successor Company*"); *provided* that in the case where the Successor Company is not a corporation, a corporation becomes a co-obligor of the Notes;

(2) the Successor Company, if other than the Issuer, expressly assumes all the Obligations of the Issuer under this Indenture and the Notes, in each case, pursuant to supplemental indentures, joinders to the Security Documents, the First Lien/ Second Lien Intercreditor Agreement or other documents or instruments in form reasonably satisfactory to the Trustee and the Notes Collateral Agent;

(3) immediately after such transaction, no Event of Default exists;

(4) unless a Change of Control Offer is made in respect of such transaction, and the Issuer (or a third Person making such Change of Control Offer as permitted by this Indenture) is capable of fully satisfying the payments required in connection therewith, 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 Measurement Period, the Consolidated Total Debt Ratio for the Issuer (or the Successor Company, as applicable) and its Restricted Subsidiaries would be equal to or less than the Consolidated Total Debt Ratio for the Issuer and its Restricted Subsidiaries for the Applicable Measurement Period immediately prior to such transaction;

(5) the Issuer or, if applicable, the Successor Company shall have delivered to the Trustee and the Notes Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that such merger, consolidation, amalgamation, sale, assignment, transfer, lease, conveyance or disposition and such supplemental indentures, joinders or other documents or instruments, if any, comply with this Indenture; and

(6) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into the Successor Company are assets of the type which would constitute Collateral under the Security Documents, the Successor Company shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture or any of the Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the Security Documents.

(b) The Successor Company shall succeed to, and be substituted for the Issuer under this Indenture, the Notes, the First Lien/ Second Lien Intercreditor Agreement and the Security Documents, and the Issuer shall automatically be released and discharged from its obligations under this Indenture, the Notes, the First Lien/Second Lien Intercreditor Agreement and the Security Documents.

(c) Notwithstanding Section 8.01(a)(3) and Section 8.01(a)(4),

(1) any Restricted Subsidiary may merge, consolidate or amalgamate with or into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to the Issuer or any Restricted Subsidiary; and

(2) the Issuer may merge, consolidate or amalgamate with or into an Affiliate of the Issuer, solely for the purpose of reincorporating the Issuer in the United States, any state thereof or the District of Columbia or any territory thereof so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

SECTION 8.02. Guarantors May Consolidate, Etc., Only on Certain Terms.

(a) Subject to Section 12.08 and the Security Documents governing release of a Guarantee upon the sale, disposition or transfer of the Capital Stock of a Subsidiary of the Issuer that is a Guarantor, no such Guarantor shall, and the Issuer shall not permit such Guarantor to, merge, consolidate or amalgamate with or into or wind up into (whether or not such 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:

(1) (A) such Guarantor is the surviving Person or the Person formed by or surviving any such merger, consolidation, amalgamation (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the "*Successor Guarantor*");

(B) the Successor Guarantor, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures, joinders to Security Documents, the First Lien/Second Lien Intercreditor Agreement or other documents or instruments;

(C) except in the case of a merger, consolidation or amalgamation entered into solely for the purpose of reincorporating a Guarantor in another jurisdiction, immediately after such transaction, no Event of Default exists; and

(D) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into the Successor Guarantor are assets of the type which would constitute Collateral under the Security Documents, the Successor Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture or any of the Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the Security Documents; or

(2) the transaction is not prohibited by Section 10.17.

(b) Subject to Section 12.08, the Successor Guarantor shall succeed to, and be substituted for, such Guarantor under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents and such Guarantor's Guarantee and such Guarantor will automatically be released and discharged from its obligations under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents and such Guarantor's Guarantee.

(c) Notwithstanding the foregoing, any Subsidiary of the Issuer that is a Guarantor may:

(1) merge, consolidate or amalgamate with or into, wind up into or transfer all or part of its properties and assets to another Guarantor or the Issuer;

(2) merge, consolidate or amalgamate with or into an Affiliate of the Issuer solely for the purpose of reincorporating or reorganizing such Guarantor in the United States, any state thereof, the District of Columbia or any territory thereof;

(3) convert into a Person organized or existing under the laws of the jurisdiction of organization of such Guarantor or a jurisdiction in the United States; or

(4) liquidate or dissolve or change its legal form;

provided that, in each case, the Board of the Issuer or the senior management of the Issuer determines in good faith that such action is in the best interests of the Issuer and is not materially disadvantageous to the Holders, without regard to the requirements set forth in this Section 8.02.

SECTION 8.03. Successor Substituted.

(a) Upon any merger, consolidation or amalgamation or any sale, assignment, transfer, lease, conveyance or disposition of all or substantially all of the assets of the Issuer or any Guarantor in accordance with Section 8.01 and Section 8.02 hereof, the successor Person formed by such consolidation or into which the Issuer or such Guarantor, as the case may be, is merged or the successor Person to which such sale, assignment, transfer, lease, conveyance or disposition is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor, as the case may be, under this Indenture or the Guarantees, as the case may be, with the same effect as if such successor Person had been named as the Issuer or such Guarantor, as the case may be, herein or the Guarantees, as the case may be.

(b) When a successor Person assumes all obligations of its predecessor hereunder, the Notes or the Guarantees, as the case may be, such predecessor shall be released from all obligations; *provided* that in the event of a transfer or lease, the predecessor shall not be released from the payment of principal and interest or other obligations on the Notes or the Guarantees, as the case may be.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

SECTION 9.01. Amendments or Supplements Without Consent of Holders.

(a) The Issuer and any Guarantor (with respect to any amendment relating to its Guarantee or this Indenture, the First Lien/Second Lien Intercreditor Agreement or any other Security Document to which it is a party) and the Trustee and the Notes Collateral Agent, at any time and from time to time, may by a supplemental indenture hereto or other amendment or supplement amend or supplement this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement or any other Security Document without the consent of any Holder, for any of the following purposes:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes or to alter the provisions of this Indenture relating to the form of the Notes (including the related definitions) in a manner that does not materially adversely affect any Holder;

(3) to comply with Article Eight of this Indenture;

(4) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders pursuant to the terms of this Indenture;

(5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder in any material respect;

(6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;

(7) to provide for the issuance of Additional Notes in accordance with the terms of this Indenture;

(8) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA, if applicable;

(9) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee, a successor Paying Agent or a successor Notes Collateral Agent thereunder pursuant to the requirements hereof;

(10) to add a Guarantor or a co-obligor of the Notes under this Indenture, the First Lien/Second Lien Intercreditor Agreement and/or the other Security Documents;

(11) to comply with the rules of any applicable securities depositary;

(12) to conform the text of this Indenture, the Guarantees, the Notes, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents to any provision of the Description of Notes to the extent that such provision in the Description of Notes was intended to be a verbatim recitation of a provision of this Indenture, the Guarantees, the Notes, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents;

(13) 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;

(14) to add Collateral with respect to the Notes and/or the related Guarantees;

(15) to release any Guarantor from its Guarantee pursuant to this Indenture when permitted or required by this Indenture;

(16) to make any amendment to the provisions of this Indenture, the Guarantees and/or the Notes to eliminate the effect of any Accounting Change or in the application thereof as described in the last paragraph of the definition of GAAP;

(17) to enter into any intercreditor agreement having substantially similar terms with respect to the Holders as those set forth in the First Lien/Second Lien Intercreditor Agreement, taken as a whole, or any joinder thereto;

(18) with respect to the Security Documents, the First Lien/Second Lien Intercreditor Agreement, as provided in the relevant Security Document and the First Lien/Second Lien Intercreditor Agreement; and

(19) to enter into any other intercreditor agreement to the extent contemplated hereby and with such changes as contemplated above or any joinder thereto.

(b) For avoidance of doubt, the Issuer need not be a party to any supplemental indenture entered into pursuant to Section 10.15 or Section 12.03. Further, for avoidance of doubt, the Trustee and the Notes Collateral Agent need not be a party to any supplemental indenture entered into pursuant to Section 9.01(a)(10).

SECTION 9.02. Amendments, Supplements or Waivers with Consent of Holders.

(a) With the consent of the Required Holders (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), the Issuer, any Guarantor (with respect to any Guarantee to which it is a party or this Indenture), the Trustee and the Notes Collateral Agent may amend or supplement this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents by a supplemental indenture hereto for the purpose of adding any provisions hereto or thereto, changing in any manner or eliminating any of the provisions hereof or thereof or modifying in any manner the rights of the Holders hereunder or thereunder (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), and any existing Default or Event of Default or compliance with any provision of this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement or any other Security Document may be waived with the consent of the Required Holders, other than Notes beneficially owned by the Issuer or its Affiliates (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes); *provided* that, without the consent of each affected Holder, no such amendment, supplement or waiver shall, with respect to any Notes held by a non-consenting Holder:

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the Maturity of any such Note or reduce the premium payable upon the redemption of such Notes or change the time at which such Notes may be redeemed pursuant to Section 11.01; *provided* that any amendment to the minimum notice requirement may be made with the consent of the Required Holders;

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Required Holders and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all affected Holders;

(5) make any Note payable in money other than that stated therein;

(6) make any change in Section 5.13 or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(7) make any change in these amendment and waiver provisions;

(8) subject to Section 10.16(f) and Section 10.17(g), amend the contractual right of any Holder expressly set forth in this Indenture and the Notes to institute suit for the enforcement of any payment of principal, premium, if any, and interest on such Holder's Notes on or after the due dates therefor;

(9) except as expressly permitted by this Indenture, release the Liens securing the Notes Obligations with respect to all or substantially all the Collateral or release the Guarantees with respect to Guarantors that represent all or substantially all of the value of the Guarantees;

(10) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary in any manner materially adverse to the Holders;

(11) designate any Subsidiary as an "Unrestricted Subsidiary" or permit the transfer of any assets (including by disposition, Investment or Restricted Payments) to "Unrestricted Subsidiaries" or otherwise permit the creation or existence of, or transfer of any assets (including by disposition, Investment or Restricted Payments) to, a subsidiary otherwise excluded from the requirements applicable to Restricted Subsidiaries pursuant to the terms of this Indenture;

(12) make any change to, or modify, the limitations on releasing and discharging Guarantors that are not Wholly-Owned Subsidiaries set forth under Article Twelve;

(13) make any change to, or modify, the covenant set forth in Section 10.18 and the related definition of Material Property;

(14) make any change or modification that would authorize the incurrence of additional Indebtedness that would be issued under this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement and the Security Documents for the primary purpose of influencing voting thresholds;

(15) make any change to, or modify, the last sentence of Section 10.11(e);

(16) make any change to the prohibition to acquire Notes through non-cash open market purchases, unless all adversely affected Holders are offered the ability to participate in such transaction on a pro rata basis, on the same terms; or

(17) permit the issuance or incurrence of any Indebtedness (including any exchange of existing Indebtedness that results in another class of Indebtedness for borrowed money, but excluding, for the avoidance of doubt, capital leases pursuant to Section 10.11(b)(4) and any "debtor-in-possession" facility pursuant to section 364 of the Bankruptcy Code (or similar financing under applicable law)) with respect to which the Notes Obligations would be subordinated in right of payment or Liens on the Collateral securing the Notes Obligations would be subordinated (any such other Indebtedness to which the Notes Obligations are subordinated in right of payment or such Liens securing any of the Notes Obligations are subordinated, "*Specified Indebtedness*"), unless each adversely affected Holder has been offered a bona fide opportunity to fund or otherwise provide its pro rata share (based on the principal amount of Notes Obligations that are adversely affected thereby held by each Holder) of the Specified Indebtedness on the same terms (other than bona fide backstop fees and reimbursement of counsel fees and other expenses in connection with the negotiation of the terms of such transaction; such fees and expenses, "*Ancillary Fees*") as offered to all other providers (or their Affiliates) of the Specified Indebtedness and to the extent such adversely affected Holder decides to participate in the Specified Indebtedness, receive its pro rata share of the fees and any other similar benefit (other than Ancillary Fees) of the Specified Indebtedness afforded to the providers of the Specified Indebtedness (or any of their Affiliates) in connection with providing the Specified Indebtedness.

(b) It shall not be necessary for the consent of Holders under this Section 9.02 to approve the particular form of any proposed amendment or waiver, and it shall be sufficient if such consent approves the substance thereof.

SECTION 9.03. Execution of Amendments, Supplements or Waivers.

(a) In executing, or accepting the additional trusts created by, any amendment, supplement or waiver permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee and the Notes Collateral Agent, as applicable, shall be provided with, and shall be fully protected in relying upon, in addition to any documents required by Section 1.03, an Officer's Certificate and (other than in the case of an amendment or supplement substantially in the form of Exhibit A hereto for the purpose of adding a Guarantor or a parent guarantor under this Indenture) Opinion of Counsel stating that the execution of such amendment, supplement or waiver is authorized and permitted by this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement or the Security Documents, as applicable, that all conditions precedent to such amendment, supplement or waiver have been satisfied and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions and qualifications, and complies with the provisions hereof.

(b) Guarantors may, but shall not be required to, execute supplemental indentures that do not modify such Guarantor's Guarantee.

(c) Upon the written request of the Issuer, and subject to receipt of the documentation to which the Trustee and the Notes Collateral Agent, as applicable, are entitled to under Section 9.03(a), the Trustee and the Notes Collateral Agent, as applicable, are hereby authorized to, and shall join with the Issuer in the execution of any such supplemental indenture or any amendment or supplement to this Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement and the Security Documents, to make any further appropriate agreements and stipulations that may be therein contained, except that the Trustee and the Notes Collateral Agent may, but shall not be obligated to, enter into any such amendment, supplement or waiver which affects the Trustee's or the Notes Collateral Agent's own rights, duties or immunities under this Indenture or otherwise.

(d) Neither the Trustee nor the Notes Collateral Agent shall have any responsibility or liability with respect to any matters that would have been covered by the Opinions of Counsel that are not permitted by this Section 9.03.

SECTION 9.04. Effect of Amendments, Supplements or Waivers. Upon the execution of any supplemental indenture under this Article Nine, this Indenture shall be modified in accordance therewith, and such amendment, supplement or waiver shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.05. Reference in Notes to Supplemental Indentures.

(a) Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture.

(b) If the Issuer shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

SECTION 9.06. Notice of Supplemental Indentures. Promptly after the execution by the Issuer, any Guarantor and the Trustee of any supplemental indenture pursuant to the provisions of Section 9.02, the Issuer shall give notice thereof to the Holders of each Outstanding Note affected, in the manner provided for in Section 1.07, setting forth in general terms the substance of such supplemental indenture; *provided* that failure to give such notice shall not impair the validity of such supplemental indenture.

ARTICLE TEN

COVENANTS

SECTION 10.01. Payment of Principal, Premium, if any, and Interest.

(a) The Issuer covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of (and premium, if any, including the Exit Premium) and interest on the Notes in accordance with the terms of the Notes and this Indenture.

(b) Principal and premium (including the Exit Premium),shall be considered paid on the due date if the Paying Agent, if other than the Issuer or a Subsidiary, holds as of 11:00 a.m. (New York City time) on the due date money deposited or caused to be deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal and premium (including the Exit Premium)then due, as applicable.

(c) PIK Interest shall be considered paid on the date due if on such date the Trustee shall have received by electronic delivery or by first class mail postage prepaid, (i) an Issuer Order to increase the aggregate principal amount of an outstanding global Note as a result of a PIK Payment in the amount set forth in such Issuer Order, or (ii) PIK Notes duly executed by the Issuer together with an Issuer Order pursuant to Section 2.02 requesting the authentication of such PIK Notes by the Trustee in the amount of such PIK Interest due as set forth in such Issuer Order.

(d) Such Issuer Order shall set forth the amount of interest payable as PIK Interest on the applicable Interest Payment Date.

(e) The Issuer shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

(f) Notwithstanding anything to the contrary contained in this Indenture, the Issuer may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

SECTION 10.02. Maintenance of Office or Agency.

(a) The Issuer shall maintain an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served.

(b) The Corporate Trust Office of the Trustee shall be such office or agency of the Issuer, unless the Issuer shall designate and maintain some other office or agency for one or more of such purposes.

(c) The Issuer shall give prompt written notice to the Trustee of any change in the location of such office or agency.

(d) If at any time the Issuer 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 of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands; *provided* that, no service of legal process against the Issuer or any Guarantor may be made at any office of the Trustee.

(e) The 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 any such designation. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

(f) Upon any bankruptcy of the Issuer, the Trustee shall automatically become the Paying Agent.

SECTION 10.03. Money for Notes Payments to Be Held in Trust.

(a) If the Issuer shall at any time act as its own Paying Agent, it shall, on or before each due date of the principal of (or premium, if any) or interest on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal of (or premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee in writing of its action or failure so to act.

(b) Whenever the Issuer shall have one or more Paying Agents for the Notes, it shall, on or before each due date of the principal of (or premium, if any) or interest on any Notes in accordance with Section 10.01, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Issuer shall promptly notify the Trustee in writing of such action or any failure so to act.

(c) Each Paying Agent agrees:

(1) that it shall hold all sums received by it as Paying Agent for the payment of the principal of or interest on any Notes in trust for the benefit of the Holders or of the Trustee;

(2) that it shall give the Trustee notice of any failure by the Issuer to make any payment of the principal of or interest on any Notes and any other payments to be made by or on behalf of the Issuer under this Indenture or the Notes when the same shall be due and payable; and

(3) that it shall pay any such sums so held in trust by it to the Trustee forthwith upon the Trustee's written request at any time during the continuance of the failure referred to in clause (2) above.

(d) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Issuer or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of (or premium, if any) or interest on any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Issuer on Issuer Request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as Trustee thereof, shall thereupon cease; *provided* that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 10.04. Organizational Existence.

(a) Subject to Article Eight, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence and that of each Restricted Subsidiary and the rights and franchises of the Issuer and each Restricted Subsidiary to conduct business; *provided* that the Issuer shall not be required to preserve any such right or franchise if the Board of the Issuer shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Subsidiaries, taken as a whole.

(b) For the avoidance of doubt, the Issuer and its Restricted Subsidiaries shall be permitted to change their organizational form; *provided* that for so long as the Issuer is organized as a partnership or a limited liability company, it shall maintain a corporate co-issuer of the Notes.

SECTION 10.05. Payment of Taxes and Other Claims. The Issuer shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Issuer or any Subsidiary or upon the income, profits or property of the Issuer or any Subsidiary, and (2) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien upon the property of the Issuer or any Subsidiary; *provided* that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (i) whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Issuer) are being maintained in accordance with GAAP, and (ii) to the extent the failure to pay any such taxes would not reasonably be expected to result in a material adverse effect.

SECTION 10.06. Minimum Cash Balance. The Issuer and its Subsidiaries on a consolidated basis shall at all times maintain cash and Cash Equivalents of at least $5.0 million.

SECTION 10.07. [Reserved].

SECTION 10.08. Statement by Officer as to Default.

(a) The Issuer shall deliver to the Trustee within 120 days after the end of each fiscal year, an Officer's Certificate stating that a review of the activities of the 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 it has kept, observed, performed and fulfilled, and has caused each of its Restricted Subsidiaries to keep, observe, perform and fulfill its obligations under this Indenture and further stating that, to the best of his or her knowledge, the Issuer during such preceding fiscal year has kept, observed, performed and fulfilled, and has caused each of its Restricted Subsidiaries to keep, observe, perform and fulfill each and every such covenant contained in this Indenture and no Default or Event of Default occurred during such year and at the date of such certificate there is no Default or Event of Default which has occurred and is continuing or, if such signers do know of such Default or Event of Default, the certificate shall describe its status, with particularity and that, to the best of his or her knowledge, no event has occurred and remains by reason of which payments on the account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action each is taking or proposes to take with respect thereto. The Officer's Certificate shall also notify the Trustee should the Issuer elect to change the manner in which it fixes its fiscal year-end. For purposes of this Section 10.08(a), such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) When any Default has occurred and is continuing under this Indenture, the Issuer shall deliver to the Trustee by registered or certified mail or facsimile transmission an Officer's Certificate specifying such event, notice or other action within 30 days of becoming aware of such Default.

(c) Neither the Trustee nor the Notes Collateral Agent will be deemed to have knowledge of any Defaults or Events of Default unless written notice of an event, which is in fact a Default or Event of Default, as applicable, has been delivered to the Trustee and the Notes Collateral Agent, if applicable, and such notice references this Indenture and states that it is a "Notice of Default" (or otherwise provides that it is a notification of a Default or Event of Default).

SECTION 10.09. Reports and Other Information.

(a) So long as any Notes are outstanding following the Issue Date, the Issuer shall furnish to the Holders:

(1) (A) all annual and quarterly financial statements substantially in forms that would be required to be contained in a filing with the SEC on Form 10-K and Form 10-Q of the Issuer, if the Issuer were required to file such forms, *plus* a "Management's Discussion and Analysis of Financial Condition and Results of Operations," and (B) with respect to the annual financial statements only, a report on the annual financial statements by the Issuer's independent registered public accounting firm; and

(2) within ten Business Days after the occurrence of an event required to be therein reported, such other information containing substantially the same information that would be required to be contained in filings with the SEC on Form 8-K as in effect on the Issue Date if the Issuer were required to file such reports; provided, however, that no such current report or any information required to be contained in such report will be required to be furnished if the Issuer determines in its good faith judgment that such event, or any information with respect to such event which is not included in any report that is furnished, is not material to noteholders or the business, assets, operations, financial positions or prospects of the Issuer and its Restricted Subsidiaries, taken as a whole, or such current report relates solely to information required under Items 3.01, 3.02, 3.03, insofar as it relates to securities other than the Notes and the Guarantees, or 5.02(e) of Form 8-K or any successor provisions thereto;

provided, however, that all such reports (A) will not be required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation SK promulgated by the SEC, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein), (B) will not be required to contain the information required by Items 201, 402, 403, 405, 406, 407, 701 or 703 of Regulation S-K, and (C) will not be required to contain the separate financial information for Guarantors contemplated by Rule 3-10 of Regulation S-X promulgated by the SEC.

(b) All such annual information and reports shall be furnished within 90 days after the end of the fiscal year to which they relate, and all such quarterly information and reports shall be furnished within 45 days after the end of the fiscal quarter to which they relate; *provided* that the annual information and report for the first fiscal year ending after the Issue Date shall be furnished within 120 days after the end of such fiscal year; and *provided further* that the quarterly information and reports for each of the fiscal quarter ending prior to and the first three fiscal quarters ending after the Issue Date shall be furnished within 60 days after the end of such applicable fiscal quarter.

(c) The Issuer shall make available such information and such reports (as well as the details regarding the conference call described below) to any Holder and, upon request, to any beneficial owner of the Notes, in each case by posting such information on its website, on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment, and shall make such information readily available to any Holder, any bona fide prospective investor in the Notes (as determined in the Issuer's sole discretion and which prospective investors shall, in any event, be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act or non-U.S. persons that certify their status as such to the reasonable satisfaction of the Issuer), 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 or accesses such information on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment; *provided* that the Issuer shall post such information thereon and make readily available any password or other login information to any such Holder, bona fide prospective investor, securities analyst or market maker; *provided*, *further*, *however*, that the Issuer may deny access to any competitively-sensitive information otherwise to be provided pursuant to this Section 10.09(c) to any such Holder, prospective investor, security analyst or market maker that is a competitor of the Issuer and its Subsidiaries to the extent that the Issuer determines in good faith that the provision of such information to such Person would be competitively harmful to the Issuer and its Subsidiaries; and *provided, further,* that such Holders, prospective investors, security analysts or market makers shall agree to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes, and (iii) not publicly disclose any such reports (and the information contained therein). The Issuer shall hold a quarterly conference call for all Holders and securities analysts (to the extent providing analysis of investment in the Notes) to discuss such financial information (including a customary Q&A session) no later than ten Business Days after distribution of such financial information.

(d) The Issuer shall be deemed to have furnished the financial statements and other information referred to in Section 10.09(a)(1), Section 10.09(a)(2), Section 10.09(b), and Section 10.09(c) if the Issuer has filed reports containing such information with the SEC.

(e) To the extent any information is not provided within the time periods specified in this Section 10.09 and such information is subsequently provided, the Issuer shall 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 cured.

(f) To the extent the Issuer delivers such reports, information and documents to the Trustee, such delivery shall be for informational purposes only and the Trustee's receipt of such reports, information and documents shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

SECTION 10.10. Limitation on Restricted Payments.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any payment or distribution on account of the 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 or distribution payable in connection with any merger, amalgamation or consolidation other than:

(A) dividends, payments or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer or in options, warrants or other rights to purchase such Equity Interests; or

(B) dividends, payments or 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 of the Issuer, the 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;

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer, including in connection with any merger, amalgamation or consolidation, in each case held by a Person other than the Issuer or a Restricted Subsidiary;

(3) make any principal payment on, or redeem, repurchase, defease, discharge 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 Issuer or any Guarantor that is a Subsidiary of the Issuer, other than:

(A) Indebtedness permitted to be incurred or issued under clauses (7) or (8) of Section 10.11(b); or

(B) the redemption, defeasance, purchase, repurchase, discharge or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within six months of the date of redemption, defeasance, purchase, repurchase, discharge or acquisition; or

(4) make any Restricted Investment;

(all such payments and other actions set forth in clauses (1) through (4) above (other than any exceptions thereto) being collectively referred to as "*Restricted Payments*").

(b) The foregoing provisions shall not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof or the giving of such irrevocable notice, as applicable, if, at the date of declaration or the giving of such notice, such payment would have complied with the provisions of this Indenture (assuming, in the case of a redemption payment, the giving of the notice of such redemption payment would have been deemed to be a Restricted Payment at such time);

(2) the prepayment, redemption, repurchase, defeasance, discharge, retirement or other acquisition of any Equity Interests, including any accrued and unpaid dividends thereon ("*Treasury Capital Stock*"), or Subordinated Indebtedness of the Issuer or any Restricted Subsidiary, in exchange for, in an amount equal to or less than the proceeds of a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) ("*Refunding Capital Stock*") made within 120 days of such sale or issuance of Refunding Capital Stock;

(3) honor any conversion request by a holder of Existing Notes and make cash payments in lieu of fractional shares in connection with any such conversion in accordance with the terms of the Existing Notes Indenture;

(4) a Restricted Payment to pay for the repurchase, redemption, retirement or other acquisition of Equity Interests (other than Disqualified Stock) of the Issuer held by any future, present or former employee, director, officer, manager or consultant of the Issuer or any of its Subsidiaries pursuant to any management, director, employee and/or advisor equity plan or equity option plan or any other management, director, employee and/or advisor 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 Issuer in connection with such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management, directors or employees of the Issuer or any of its Subsidiaries in connection with any corporate transaction; *provided*, *however*, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year $100,000; *provided*, *further*, that such amount may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer to any future, present or former employees, directors, officers, managers or consultants of the Issuer or any of its Subsidiaries that occurs after the Issue Date; *plus*

(B) the cash proceeds of key man life insurance policies received by the Issuer or the Restricted Subsidiaries after the Issue Date; *less*

(C) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A) and (B) of this Section 10.11(b)(4);

provided that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) of this Section 10.11(b)(4); and *provided further* that cancellation of Indebtedness owing to the Issuer or any Restricted Subsidiary from any future, present or former employees, directors, officers, managers or consultants of the Issuer or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Indenture;

(5) payments made or expected to be made by the Issuer or any Restricted Subsidiary in respect of withholding or similar taxes payable in connection with the exercise or vesting of Equity Interests or any other equity award by any future, present or former employee, director, officer, manager or consultant of the Issuer or any of the Issuer's Restricted Subsidiaries and repurchases or withholdings of Equity Interests in connection with the exercise of any stock or other equity options or warrants or other incentive interests or the vesting of equity awards 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 obligation with respect to, such options or warrants or other incentive interests or other Equity Interests or equity awards;

(6) the repurchase, redemption, defeasance, discharge, acquisition or retirement of any Subordinated Indebtedness (A) in accordance with provisions similar to those of Section 10.16 and Section 10.17, or (B) from Declined Proceeds; *provided* that (x) at or prior to such repurchase, redemption, discharge, defeasance, acquisition or retirement, the Issuer (or a third Person permitted by this Indenture) has made a Change of Control Offer, Asset Sale Offer, Alternate Offer or Advance Offer, as the case may be, with respect to the Notes to the extent required as a result of such Change of Control or Asset Sale, as the case may be, and (y) all Notes tendered by Holders in connection with the relevant Change of Control Offer, Asset Sale Offer, Alternate Offer or Advance Offer, as applicable, have been repurchased, redeemed, defeased, acquired or retired or discharged;

(7) the repurchase, redemption or other acquisition of Equity Interests of the 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 Issuer or any Restricted Subsidiary, in each case, permitted under this Indenture;

(8) payments or distributions to satisfy dissenters' or appraisal rights and the settlements of any claims or actions (whether actual, contingent or potential) with respect thereto, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Article Eight; and

(9) the prepayment, redemption, defeasance, repurchase, retirement, discharge, exchange or other acquisition for value of Indebtedness under the Existing Notes through cash-only open market purchases effectuated through a broker or repayments at maturity.

(c) For purposes of determining compliance with this Section 10.10, in the event that a proposed Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in the preceding clauses (1) through (10) of Section 10.10(b) and/or one or more of the clauses contained in the definition of Permitted Investments, the Issuer shall be entitled to divide or classify (but may not thereafter reclassify) such Restricted Payment or Investment (or portion thereof) among such clauses (1) through (10) of Section 10.10(b) and/or one or more of the clauses contained in the definition of Permitted Investments, in a manner that otherwise complies with this Section 10.10.

(d) The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the assets or securities proposed to be transferred or issued by the Issuer or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(e) Notwithstanding anything to the contrary, no Restricted Payment of any kind may be made on Preferred Stock issued on the Issue Date.

(f) For the avoidance of doubt, this Section 10.10 shall not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of the Issuer or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Indenture.

SECTION 10.11. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer 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 Issuer 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 a Guarantor to issue Preferred Stock; *provided*, that Restricted Subsidiaries that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock.

(b) The foregoing limitations shall not apply to:

(1) [reserved];

(2) the incurrence by the Issuer and any Guarantor of Indebtedness represented by (i) the Notes (including any Guarantee thereof) (other than any Additional Notes, if any, or guarantees with respect thereto), and (ii) the Existing Notes outstanding on the date hereof;

(3) Indebtedness of the Issuer and the Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clause (2) of this Section 10.11(b));

(4) Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations), incurred by the Issuer or any of the Restricted Subsidiaries in the ordinary course of business and consistent with past practice, in good faith for a bona fide business purpose and which shall not be permitted to be incurred for any other purpose, including "liability management transactions," to finance the purchase, lease, expansion, construction, development, replacement, maintenance, upgrade, installation, replacement, 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; *provided* that the aggregate amount of Indebtedness incurred or issued and outstanding pursuant to this clause (4), does not at any time outstanding exceed $5.0 million;

(5) (A) Indebtedness incurred by the Issuer or any of the Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bankers' acceptances, bank guarantees, warehouse receipts or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business and consistent with past practice, including letters of credit in favor of suppliers or trade creditors or in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, and (B) Indebtedness of the Issuer or any of its Restricted Subsidiaries as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, customers or other creditors issued in the ordinary course of business and consistent with past practice;

(6) Indebtedness arising from agreements of the Issuer or any of the Restricted Subsidiaries providing for indemnification, adjustment of purchase price, earn-out or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, Subsidiary or an Investment, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(7) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that such Indebtedness shall constitute a Permitted Investment; *provided*, *further*, that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor, excluding any Indebtedness in respect of accounts payable incurred in connection with goods and services rendered in the ordinary course of business and consistent with past practice (and not in connection with the borrowing of money), is unsecured and expressly subordinated in right of payment (to the extent permitted by applicable law and it does not result in material adverse tax consequences) to the Notes and evidenced by a note pledged by a Lien as security for the Notes and the Guarantees, as applicable, and only to the extent not constituting Excluded Assets; *provided*, *further*, that any subsequent issuance or transfer (other than the incurrence of a Permitted Lien) of any Capital Stock or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien (but not foreclosure thereon)) shall be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause;

(8) Indebtedness of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary; *provided* that such Indebtedness shall constitute a Permitted Investment; *provided*, *further*, that if a Restricted Subsidiary that is a Guarantor incurs such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor, excluding any Indebtedness in respect of accounts payable incurred in connection with goods and services rendered in the ordinary course of business and consistent with past practice (and not in connection with the borrowing of money), such Indebtedness is unsecured and expressly subordinated in right of payment (to the extent permitted by applicable law and it does not result in material adverse tax consequences) to the Notes or the Guarantee of the Notes of such Guarantor and evidenced by a note pledged by a Lien as security for the Notes and the Guarantees, as applicable, and only to the extent not constituting Excluded Assets; *provided*, *further*, that any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien (but not foreclosure thereon)) shall be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause;

(9) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(10) obligations in respect of self-insurance and obligations in respect of stays, customs, performance, indemnity, bid, appeal, judgment, and surety and other similar bonds or instruments and performance, bankers' acceptance facilities and completion guarantees and similar obligations provided by the Issuer or any of the 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 and consistent with past practice or in connection with judgments that do not result in an Event of Default;

(11) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness or the issuance by the Issuer or any Restricted Subsidiary of Disqualified Stock or Preferred Stock that serves to refund, refinance, replace, renew, extend or defease (collectively, "*refinance*" with "*refinances*," "*refinanced*" and "*refinancing*" having a correlative meaning) any Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any of its Restricted Subsidiaries incurred or issued as permitted under clause (3) and this clause (11) of this Section 10.11(b) or any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued to so refinance such Indebtedness, Disqualified Stock or Preferred Stock including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay accrued but unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing (the "*Refinancing Indebtedness*") on or prior to its respective maturity; *provided*, *however*, 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 refinanced (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 refinances (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 such Guarantee at least to the same extent as the Indebtedness being refinanced, or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively,

(C) such Refinancing Indebtedness (i) shall not include Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor or obligor that refinances Indebtedness or Disqualified Stock of the Issuer or a Subsidiary of the Issuer that is a Guarantor, and (ii) shall not be guaranteed by a Subsidiary of the Issuer that is not a Guarantor for the Indebtedness, Preferred Stock or Disqualified Stock being refinanced, and

(D) to the extent such Indebtedness, Disqualified Stock or Preferred Stock refinanced is (i) Secured Indebtedness, the Liens securing such Refinancing Indebtedness, Disqualified Stock or Preferred Stock shall (x) have a lien priority equal to or junior to the Liens securing the Indebtedness being refinanced, and (y) not be secured by any Collateral that did not secure such Indebtedness, Disqualified Stock or Preferred Stock being refinanced, or (ii) unsecured Indebtedness, such Refinancing Indebtedness must be unsecured;

(12) (A) Cash Management Obligations, (B) Indebtedness in respect of netting services, overdraft protections and similar arrangements and other 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 and consistent with past practice, or (C) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business and consistent with past practice of the Issuer and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Issuer and its Restricted Subsidiaries;

(13) (A) any guarantee by the Issuer or any Restricted Subsidiary of Indebtedness or other obligations of the Issuer or any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by the Issuer or such Restricted Subsidiary is permitted under the terms of this Indenture; *provided* that if the Indebtedness that is being guaranteed is secured on a junior lien priority basis, unsecured or subordinated to the Notes, the guarantee shall also be secured on a junior lien priority basis, unsecured and/or subordinated to the Notes, or

(B) any co-issuance by the Issuer or any Restricted Subsidiary of Indebtedness of the Issuer or any Restricted Subsidiary permitted under the terms of this Indenture;

(14) Indebtedness of the Issuer or any of its 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 and consistent with past practice;

(15) Indebtedness incurred by the Issuer or any of the Restricted Subsidiaries to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes or exercise the Issuer's legal defeasance or covenant defeasance as described under Article Thirteen, in each case in accordance with this Indenture;

(16) 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 acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Indenture;

(17) Indebtedness representing deferred compensation to employees of the Issuer or any Restricted Subsidiary incurred in the ordinary course of business and consistent with past practice;

(18) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any Permitted Investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Indenture;

(19) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business and consistent with past practice;

(20) unfunded pension fund and other employee benefits plan obligations and liabilities incurred in the ordinary course of business and consistent with past practice;

(21) the incurrence by the Issuer or any of its Restricted Subsidiaries of Subordinated Indebtedness with the prior written consent of the Required Holders (and any Refinancing Indebtedness to refinance such Subordinated Indebtedness); and

(22) all premiums (if any), interest (including Post-Petition Interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (21) of this Section 10.11(b).

(c) For purposes of determining compliance with this Section 10.11,

(1) 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 of permitted Indebtedness, Disqualified Stock or Preferred Stock described in

clauses (1) through (22) (or within any subclauses therein) of Section 10.11(b), the Issuer, in its sole discretion, shall divide or classify (but may not thereafter reclassify) all or a portion of such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this covenant and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or portion thereof) in one of the above clauses; *provided* that (i) all Indebtedness outstanding under the Notes on the Issue Date will be treated as incurred under Section 10.11(b)(2)(i), and (ii) all Indebtedness outstanding under the Existing Notes on the Issue Date will be treated as incurred under Section 10.11(b)(2)(ii);

(2) at the time of incurrence, the Issuer shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 10.11(b) above; and

(3) the principal amount of Indebtedness outstanding under any clause of this covenant shall be determined after giving effect to the application of proceeds of any Indebtedness incurred to refinance any such Indebtedness.

(d) 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 will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of Section 10.11.

(e) 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 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 term debt, or first committed, in the case of revolving credit 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 of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed the principal amount of such Indebtedness, Disqualified Stock or Preferred Stock being refinanced, plus the aggregate amount of accrued but unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing. Notwithstanding any other provision of this Section 10.11, the maximum amount of Indebtedness that the Company may incur pursuant to this Section 10.11 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount 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 deem unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because such Indebtedness is unsecured. Any Indebtedness or Guarantees owed by the Issuer or any Guarantor to, or in respect of, any Subsidiary that is not a Guarantor and any guarantee by the Issuer or Guarantor of Indebtedness of a Subsidiary that is not a Guarantor shall be subordinated in right of payment to the Notes Obligations.

SECTION 10.12. Liens. The Issuer shall not, and will not permit any Guarantor that is a Subsidiary of the Issuer to, directly or indirectly, create, incur or assume any Lien (except Permitted Liens).

SECTION 10.13. Limitations on Transactions with Affiliates.

(a) The Issuer shall not, and will 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 Issuer (each of the foregoing, an "*Affiliate Transaction*") involving aggregate payments or consideration in excess of $100,000, unless:

(1) (A)(i) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis, or (ii) if in the good faith judgment of the Issuer, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise

fair to the Issuer or such Restricted Subsidiary from a financial point of view and when such transaction is taken in its entirety, and (B) such Affiliate Transaction is made in the ordinary course of business, consistent with past practice, in good faith and for a bona fide business purpose; and

(2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $250,000 a resolution adopted by a majority of the Board of the Issuer approving such Affiliate Transaction, accompanied by an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

(b) The foregoing provisions shall not apply to the following:

(1) transactions between or among the Issuer and a Restricted Subsidiary or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction;

(2) Restricted Payments permitted by Section 10.10 and the definition of Permitted Investments;

(3) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to or on behalf of, or for the benefit of, former, current or future officers, directors, managers, employees or consultants of the Issuer, any Restricted Subsidiary of the Issuer;

(4) transactions in which the 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 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 Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's length basis;

(5) any agreement or arrangement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect in the good faith judgment of the Board of the Issuer or the senior management of the Issuer to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(6) transactions with customers, vendors, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and that are consistent with past practice and otherwise in compliance with the terms of this Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the Board of the Issuer or the senior management thereof, or are on terms, taken as a whole, that are not materially less favorable as might reasonably have been obtained at such time from an unaffiliated party on an arm's length basis;

(7) the issuance or transfer of (A) Equity Interests (other than Disqualified Stock) of the Issuer and the granting and performing of customary registration rights to any former, current or future director, manager, officer, employee or consultant of the Issuer or any of its Subsidiaries, and (B) directors' qualifying shares and shares issued to foreign nationals as required by applicable law;

(8) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, current or former employees, directors, officers, managers or consultants of the Issuer, any of its Subsidiaries and employment agreements, consulting agreements, indemnification agreements, employee benefit plans, stock option plans and other compensatory or severance arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or similar arrangements with any such employees, directors, officers, managers or consultants (including salary or guaranteed payments and bonuses) which, in each case, are approved by the Board of the Issuer or the senior management of the Issuer in good faith, in each case pursuant to this clause (8), so long as for bona fide business purposes, in the ordinary course of business and consistent with past practice;

(9) (A) investments by Permitted Holders in securities or loans of the Issuer or any of its Restricted Subsidiaries (and any payment of out-of-pocket expenses incurred by such Permitted Holders in connection therewith) so long as the investment is being offered generally to other investors on the same or more favorable terms, and (B) payments to Permitted Holders in respect of securities or loans of the Issuer or any of its Restricted Subsidiaries contemplated in the foregoing subclause (A) of this clause (9) or that were acquired from Persons other than the Issuer and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;

(10) transactions with a Person that is an Affiliate of the Issuer arising solely because the Issuer or any Restricted Subsidiary owns any Equity Interest in, or controls, such Person, in the ordinary course of business on such terms, taken as a whole, that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(11) any lease entered into between the Issuer or any Restricted Subsidiary, as lessee and any Affiliate of the Issuer, as lessor, which is approved by the Board of the Issuer or the senior management of the Issuer in good faith for a bona fide business purpose;

(12) intellectual property licenses entered into in the ordinary course of business and consistent with past practice;

(13) an agreement between a Person and an Affiliate of such Person existing at the time such Person is acquired by, or merged into, the Issuer or a Restricted Subsidiary and not entered into in contemplation of such acquisition or merger; *provided* that such acquisition or merger complied with this covenant;

(14) transactions between the Issuer or any Restricted Subsidiary and any other Person that would constitute an Affiliate Transaction solely because a director of such other Person is also a director of the Issuer; *provided*, *however*, that such director abstains from voting as a director of the Issuer on any matter including such other Person; and

(15) payments to and from, and transactions with, any joint ventures entered into in the ordinary course of business and consistent with past practice (including, without limitation, any cash management activities related thereto).

SECTION 10.14. Limitations on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries that are not Guarantors 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 any such Restricted Subsidiary that is not a Guarantor to:

(a) (1) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or (2) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries that is a Guarantor;

(b) make loans or advances to the Issuer or any of its Restricted Subsidiaries that is a Guarantor; or

(c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries that is a Guarantor, except (in each case) for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Issue Date;

(2) this Indenture, the Notes, the Guarantees, the Existing Notes, the Existing Notes Indenture and related guarantees and the Security Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in this Section 10.14(c) on the property so acquired;

(4) applicable law or any applicable rule, regulation or order or any requirement of any regulatory authority having jurisdiction over the Issuer or any Restricted Subsidiary or any of their businesses;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Capital Stock of a Person, which Person is acquired by or merged, consolidated or amalgamated with or into the Issuer or any Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation, amalgamation or redesignation, in existence at the time of such acquisition or at the time it merges, consolidates or amalgamates with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person or at the time it is redesignated (but, in each case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired or redesignated;

(6) contracts, including sale-leaseback agreements, for the sale or disposition of assets, including customary restrictions with respect to a Subsidiary of the Issuer pursuant to an agreement that has been entered into for the sale or disposition of Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness and Liens otherwise permitted to be incurred pursuant to Section 10.11 and Section 10.12 that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(8) restrictions on cash or other deposits or net worth imposed by customers or other counterparties under contracts entered into in the ordinary course of business and consistent with past practice or restrictions on cash or other deposits permitted under Section 10.12 or arising in connection with any Permitted Liens;

(9) other Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Guarantors that is permitted to be incurred or issued subsequent to the Issue Date pursuant to Section 10.11;

(10) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating to such joint venture or in shareholder, partnership, limited liability company and other similar agreements in respect of non-wholly owned Restricted Subsidiaries;

(11) customary provisions contained in leases, subleases, licenses, sublicenses or similar agreements, including with respect to intellectual property and other agreements;

(12) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Issuer or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business and consistent with past practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the 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 the Issuer or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(13) other Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred subsequent to the Issue Date pursuant to Section 10.11; *provided* that, (A) in the good faith judgment of the Issuer, such incurrence will not materially impair the Issuer's ability to make payments under the Notes when due, (B) 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, or (C) the encumbrances and restrictions in such Indebtedness, Disqualified Stock or Preferred Stock either are not materially more restrictive taken as a whole than those contained in the Notes or the Existing Notes as in effect on the Issue Date or generally represent market terms at the time of incurrence or issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries; and

(14) any encumbrances or restrictions of the type referred to in Section 10.14(a), Section 10.14(b), and this Section 10.14(c) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (13) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the 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.

(d) For purposes of determining compliance with this Section 10.14, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock, and (2) the subordination of loans and advances made to the Issuer or a Restricted Subsidiary to other Indebtedness incurred by the Issuer or such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 10.15. Future Guarantors.

(a) With respect to any Subsidiary of the Issuer that is not an Excluded Subsidiary, such Subsidiary shall promptly (and in any event within 60 days after such Subsidiary becomes a Subsidiary of the Issuer or, with respect to any Subsidiary that ceases to be an Excluded Subsidiary pursuant to the proviso to the definition of "Excluded Subsidiary", within 10 days after becoming an obligor with respect to such permitted Indebtedness), and the Issuer may at its option cause any Subsidiary to, execute (x) a supplemental indenture substantially in the form of Exhibit A hereto providing for a Guarantee by such Subsidiary and (y) joinders to the First Lien/Second Lien Intercreditor Agreement and the other Security Documents or new intercreditor agreements and Security Documents, together with any other filings and agreements (subject to customary extension periods) required by the Security Documents to create or perfect the security interests for the benefit of the Holders in the Collateral of such Subsidiary.

(b) Each Guarantee shall be released in accordance with the provisions of this Indenture pursuant to Article Twelve.

SECTION 10.16. Change of Control.

(a) If a Change of Control occurs, unless, prior to, or concurrently with, the time the Issuer is required to make a Change of Control Offer (as defined below), the Issuer has previously or concurrently mailed or delivered, or otherwise sent through electronic transmission, a redemption notice with respect to all the Outstanding Notes as described under Section 4.01 or Section 11.05, the Issuer 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 the sum of (1) the principal amount plus (2) 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 on or prior to the Change of Control Payment Date (as defined in Section 10.16(a)(2)) plus (3) the applicable Exit Premium (or such higher amount as the Issuer may determine (any Change of Control Offer at a higher amount, an "*Alternate Offer*")) . Within 30 days following any Change of Control, the Issuer shall send notice of such Change of Control Offer electronically or by first-class mail, with a copy to the Trustee sent in the same manner, to each Holder to the address of such Holder appearing in the Note Register or otherwise in accordance with the procedures of the Depository, with the following information:

(1) that a Change of Control Offer is being made pursuant to this Section 10.16 and that all Notes properly tendered pursuant to such Change of Control Offer shall be accepted for payment by the Issuer;

(2) the purchase price and the purchase date, which will be no earlier than ten 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 pursuant to this Section 10.16(a);

(3) that any Note not properly tendered shall remain outstanding and continue to accrue interest;

(4) that, unless the Issuer defaults 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;

(5) 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 the Depository, 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;

(6) that if less than all of such Holder's Notes are tendered for purchase, such Holder will be issued new Notes (or, in the case of global Notes, such Notes shall be reduced by such amount of Notes that the Holder has tendered) and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered; *provided* that the unpurchased portion of the Notes must be equal to at least $1.00 or an integral multiple of $1.00 in excess of $1.00;

(7) if such notice is sent 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 describing each such condition, and, if applicable, stating that, in the Issuer's discretion, the Change of Control Payment Date may be delayed until such time (including more than 60 days after the notice is mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or that such purchase may not occur and such notice may be rescinded in the event that the Issuer shall determine that any or all such conditions shall not have been, or will not be, satisfied by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed; and

(8) such other instructions, as determined by the Issuer, consistent with this Section 10.16, that a Holder must follow.

(b) While the Notes are in global form and the Issuer makes 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 through the facilities of the Depository, subject to its rules and regulations.

(c) The Issuer 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 Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer 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.

(d) On the Change of Control Payment Date, the Issuer shall, to the extent permitted by law,

(1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(3) 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 Issuer.

(e) The Issuer shall not be required to make a Change of Control Offer if a third party makes the Change of Control Offer (including, for the avoidance of doubt, an Alternate 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 Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer (including, for the avoidance of doubt, an 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 the making of such Change of Control Offer.

(f) If Holders of not less than 90% in aggregate principal amount of the Outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuer, or any third party making a Change of Control Offer in lieu of the Issuer as described above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Issuer or such third party shall have the right, upon not less than ten days' nor more than 60 days' prior notice (*provided* that such notice is given not more than 30 days following such purchase pursuant to the Change of Control Offer described above) to redeem all Notes that remain outstanding following such purchase on a date (the "*Second Change of Control Payment Date*") at a price in cash equal to the Change of Control Payment (excluding any early tender premium or similar premium and any accrued and unpaid interest to any Holder in such Change of Control Payment) in respect of the Second Change of Control Payment Date, plus accrued and unpaid interest on the Notes that remain outstanding to, but excluding, the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the Second Change of Control Payment Date). The provisions of this Section 10.16 may be waived or modified at any time with the written consent of the Required Holders. A Change of Control Offer with respect to the Notes (including, for the avoidance of doubt, an 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 and/or the Guarantees so long as the offer to purchase a Holder's Notes in the tender offer is not conditioned upon the delivery of consents by such Holder. In addition, the Issuer or any third party approved in writing by the Issuer that is making the Change of Control Offer (including, for the avoidance of doubt, an Alternate Offer) may increase or decrease the Change of Control Payment (or decline to pay any early tender or similar premium) being offered to Holders at any time in its sole discretion, so long as the Change of Control Payment is at least equal to 101% of the aggregate principal amount of the Notes being repurchased, plus accrued and unpaid interest thereon.

SECTION 10.17. Asset Sales.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to consummate, directly or indirectly, an Asset Sale unless:

(1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) at least 90% of the consideration for such Asset Sale (measured at the time of contractually agreeing to such Asset Sale) received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that the amount of:

(A) any liabilities (as reflected on the Issuer's or such Restricted Subsidiary's most recent consolidated balance sheet or in the footnotes thereto, or if incurred, accrued or increased subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Issuer's or such Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence, accrual or increase had taken place on or prior to the date of such balance sheet, as determined by the Issuer) of the Issuer or any Restricted Subsidiary, other than liabilities that are by their terms subordinated (including liens subordinated) to the Notes or the Guarantees of the Notes or are unsecured, that are assumed by the transferee of any such assets (or are otherwise extinguished in connection with the transactions relating to such Asset Sale) pursuant to a written agreement which releases the Issuer or such Restricted Subsidiary from such liabilities; and

(B) any securities, notes or other obligations or assets received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days following the closing of such Asset Sale,

shall, for purposes of this Section 10.17 (and no other provision of this Indenture), be deemed to be cash or Cash Equivalents; and

(3) the Issuer or such Restricted Subsidiary has complied with the applicable provisions of this Indenture and the Security Documents.

(b) Promptly, and in any event within 365 days after the Issuer's or any Restricted Subsidiary's receipt of any Net Proceeds from any Asset Sale (the "*Asset Sale Proceeds Application Period*"), the Issuer or such Restricted Subsidiary, at its option, may apply an amount equal to the Net Proceeds from such Asset Sale,

(1) to repay Obligations under the Notes; or

(2) to apply the Net Proceeds received by the Issuer or its Restricted Subsidiaries from such Asset Sale 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 Issuer or a Restricted Subsidiary, 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 property or assets (other than Capital Stock), in the case of each of clauses (A), (B) and (C), either (i) that is used or useful in a Similar Business, or (ii) that replace the businesses, properties and/or assets that are the subject of such Asset Sale; or

(3) any combination of the foregoing;

provided that, in the case of clause (2) above of this Section 10.17(b), a binding commitment or letter of intent 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 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 90 days of the Asset Sale Proceeds Application Period (an "*Acceptable Commitment*") and such Net Proceeds are actually applied in such manner within the later of 365 days from the consummation of the Asset Sale and 90 days from the date of the Acceptable Commitment, and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds shall constitute Excess Proceeds unless the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment within 90 days of such cancellation or termination (a "*Second Commitment*") and such Net Proceeds are actually applied in such manner within 90 days from the date of the Second Commitment; *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 Excess Proceeds to the extent the Asset Sale Proceeds Application Period has expired.

(c) To the extent Net Proceeds from an Asset Sale exceed amounts that are invested or applied as provided and within the time period set forth in Section 10.17(b), such excess amount will be deemed to constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds $500,000, the Issuer shall make an offer to all Holders (an "*Asset Sale Offer*"), to purchase the maximum aggregate principal amount (or accreted value, as applicable) of the Notes that is equal to $1.00 or an integral multiple of $1.00 in excess thereof, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to the sum of (1) the principal amount plus (2) accrued and unpaid interest, if any, to, but excluding, the date fixed for the closing of such offer, plus (3) the applicable Exit Premium, in accordance with the procedures set forth in this Indenture. The Issuer shall commence an Asset Sale Offer with respect to Excess Proceeds within ten (10) Business Days after the date that Excess Proceeds exceed $500,000 by transmitting electronically or mailing the notice required pursuant to the terms of this Indenture, with a copy to the Trustee. The Issuer may satisfy the foregoing obligation with respect to such Net Proceeds from an Asset Sale by making an Asset Sale Offer prior to the expiration of the Asset Sale Proceeds Application Period (the "*Advance Offer*") 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.

(d) To the extent that the aggregate principal amount (or accreted value, as applicable) of Notes tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion), the Issuer may use any remaining Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion) (such remaining proceeds, the "*Declined Proceeds*") in any manner not prohibited by this Indenture. If the aggregate principal amount (or accreted value, as applicable) of Notes tendered pursuant to an Asset Sale Offer exceeds the amount of Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion), the Trustee

shall select the Notes (subject to applicable procedures of the Depository as to global Notes) to be purchased or repaid on a pro rata basis based on the accreted value or aggregate principal amount of the Notes, tendered with adjustments as necessary so that no Notes will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero (regardless of whether there are any remaining Excess Proceeds upon such completion), and in the case of an Advance Offer, the amount of Net Proceeds the Issuer is offering to apply in such Advance Offer shall be excluded in subsequent calculations of Excess Proceeds. Additionally, upon consummation or expiration of any Advance Offer, any remaining Net Proceeds shall not be deemed Excess Proceeds and the Issuer may use such Net Proceeds for any purpose not otherwise prohibited under this Indenture.

(e) Pending the final application of an amount equal to the Net Proceeds pursuant to this Section 10.17 (for the avoidance of doubt, not applying to Declined Proceeds), the Issuer or the applicable Restricted Subsidiary shall hold or invest such Net Proceeds in cash, Cash Equivalents or Investment Grade Securities in a segregated account; *provided* that, pending final application of any such amount, such Net Proceeds shall not be permitted to be used to repay or repurchase any other Indebtedness other than Indebtedness set forth in clauses (b), (c), and (d) of this Section 10.17.

(f) The Issuer 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 an Asset Sale Offer or an Advance Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Asset Sale provisions described in this Indenture by virtue of such compliance.

(g) The provisions of this Section 10.17 may be waived or modified at any time with the written consent of the Required Holders. An Asset Sale 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, the Guarantees, the First Lien/Second Lien Intercreditor Agreement and/or the other Security Documents.

SECTION 10.18. Limitation on Material Property Dispositions. The Issuer shall not, nor shall it permit any Subsidiary to, sell, transfer or otherwise dispose of any Material Property (whether pursuant to a sale, lease, license, transfer, Investment, Restricted Payment, dividend or otherwise or relating to the exclusive rights thereto) to any non-Guarantor (other than the Issuer), other than the grant of a non-exclusive license of Intellectual Property to any Subsidiary in the ordinary course of business for a bona fide business purpose, and no non-Guarantor shall own or hold an exclusive license to any Material Property.

SECTION 10.19. Certain DIP Financing Protections. If the Issuer or any Guarantor commences proceedings under any Bankruptcy Law and obtains any debtor-in-possession or similar financing in connection therewith (a "*DIP Financing*"), the parties hereto agree that the Issuer (or any applicable Guarantor) shall seek bankruptcy court approval for each Holder (considered together with its Affiliates) holding at least $1.0 million of the then-outstanding principal amount of Notes to have the right to elect to have all such Holder's Notes (calculated at the then-outstanding principal amount of the Notes including any PIK Notes and the Exit Premium) converted into and exchanged for, or repaid and reissued as, loans under such DIP Financing (a "*DIP Rollup*"); provided, that such DIP Rollup shall be subject to approval of the applicable bankruptcy court. Any such DIP Financing shall be in form and substance acceptable to the Required Holders, including, without limitation, with respect to quantum, structure, and any roll-up of the Notes Obligations hereunder.

ARTICLE ELEVEN

REDEMPTION OF NOTES

SECTION 11.01. Right of Redemption.

(a) The Issuer may, at its option and on one or more occasions, redeem the Notes, in whole or in part, upon notice as set forth in Section 11.05, at a redemption price equal to the sum of (1) the principal amount plus (2) accrued and unpaid interest thereon, if any, to, but excluding, the date of redemption (any applicable date of redemption hereunder, the "*Redemption Date*"), subject to the right of Holders of record of Notes on the relevant Regular Record Date to receive interest due on the relevant Interest Payment Date falling on or prior to the Redemption Date, plus (3) the applicable Exit Premium.

(b) Notwithstanding anything to the contrary herein, unless Notes are redeemed pursuant to this Article Eleven or otherwise repurchased in accordance with this Indenture prior to the stated maturity date, the Issuer shall promptly pay on the maturity date of the Notes in cash the applicable Exit Premium as specified in Section 10.01.

SECTION 11.02. Applicability of Article. Redemption of Notes at the election of the Issuer or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article Eleven.

SECTION 11.03. Election to Redeem; Notice to Trustee. In case of any redemption at the election of the Issuer, the Issuer shall, at least two Business Days before notice of redemption is required to be sent to Holders pursuant to Section 11.05 hereof (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of the information contained in Section 11.05 herein and shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Notes to be redeemed pursuant to Section 11.04; *provided* that no Opinion of Counsel pursuant to Section 1.03 or otherwise shall be required in connection with the delivery of such notice of redemption or redemption. The Trustee shall have no responsibility or liability with respect to any matters that would have been covered by any Opinion of Counsel that is not permitted by this Section 11.03.

SECTION 11.04. Selection by Trustee of Notes to Be Redeemed.

(a) With respect to any optional redemption of Notes made pursuant to this Indenture, selection of the Notes for redemption shall be made, in the case of certificated Notes, by the Trustee on a *pro rata* basis to the extent applicable or by lot or by such method as the Trustee shall deem fair and appropriate; *provided* that if the Notes are represented by global Notes, interests in the Notes shall be selected for redemption by the Depository in accordance with its standard procedures therefor.

(b) Notices of redemption shall be delivered by the Issuer electronically, in accordance with the procedures of the Depository in the case of global Notes, or mailed by first-class mail, postage prepaid, at least ten days, but except as set forth under Section 11.05, not more than 60 days before the Redemption Date to each Holder at such Holder's registered address or otherwise in accordance with the procedures of the Depository, except that redemption notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture. If any Note is to be redeemed in part only, any notice of redemption that relates to such Note shall state the portion of the principal amount thereof that has been or is to be redeemed.

(c) With respect to Notes represented by certificated Notes, if any Notes are to be redeemed in part only, the Issuer shall issue a new Note in a principal amount equal to the unredeemed portion of the original Note in the name of the Holder thereof upon cancellation of the original Note; *provided* that the new Notes shall be only issued in minimum denominations of $1.00 and integral multiple of $1.00 in excess thereof.

SECTION 11.05. Notice of Redemption.

(a) The Issuer shall deliver electronically or mail by first-class mail, postage prepaid, notices of redemption at least ten days, but except as set forth in this Section 11.05, not more than 60 days before the Redemption Date to each Holder at such Holder's registered address or otherwise in accordance with the procedures of the Depository, except that redemption notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture. Notice of redemption may be conditional.

(b) All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price, or if not then ascertainable, the manner of calculation thereof;

(3) in the case of certificated Notes, if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of a partial redemption, the principal amounts) of the particular Notes to be redeemed;

(4) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the Redemption Date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed shall be issued in the name of the Holder thereof upon cancellation of the original Note;

(5) that on the Redemption Date, the Redemption Price (and accrued interest, if any, to but not including the Redemption Date payable as provided in Section 11.07) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and that interest thereon will cease to accrue on and after the Redemption Date;

(6) any condition precedent to the redemption;

(7) the place or places where such Notes are to be surrendered for payment of the Redemption Price and accrued but unpaid interest, if any;

(8) the name and address of the Paying Agent;

(9) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(10) the CUSIP number or ISIN and that no representation is made as to the accuracy or correctness of the CUSIP number or ISIN, if any, listed in such notice or printed on the Notes; and

(11) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes are to be redeemed.

(c) Notice of redemption of Notes to be redeemed at the election of the Issuer shall be given by the Issuer or, at the Issuer's request and provision of such notice information two Business Days (unless a shorter notice shall be agreed to by the Trustee) prior to the date notice is to be given, by the Trustee in the name and at the expense of the Issuer.

(d) Notice of any redemption of the Notes (including upon an equity offering or in connection with another transaction (or series of related transactions) or an event that constitutes a Change of Control) may, at the Issuer's discretion, be given prior to the completion or the occurrence thereof and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion or occurrence of the related equity offering or other transaction or event, as the case may be. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice shall describe each such condition, and, if applicable, shall state that, in the Issuer's discretion, the Redemption Date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied or waived, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been, or will not be, satisfied or waived by the Redemption Date, or by the Redemption Date as so delayed, or such notice may be rescinded at any time in the Issuer's discretion if in the good faith judgment of the Issuer any or all of such conditions will not be satisfied or waived. In addition, the Issuer may provide in such notice that payment of the Redemption Price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person. In no event shall the Trustee be responsible for monitoring, or charged with knowledge of, the maximum aggregate amount of the Notes eligible under this Indenture to be redeemed.

(e) If any such condition precedent has not been satisfied, the Issuer shall provide written notice to the Trustee thereof. Upon receipt, the Trustee shall provide such notice to each Holder of the Notes in the same manner in which the notice of redemption was given.

(f) The Issuer 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 and, with respect to redemptions that occur on the same date, may specify the order in which such redemptions are deemed to occur.

SECTION 11.06. Deposit of Redemption Price. On or prior to 11:00 a.m. (New York City time) on any Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and accrued but unpaid interest, if any, on, all the Notes which are to be redeemed on such Redemption Date.

SECTION 11.07. Notes Payable on Redemption Date.

(a) Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable, unless such redemption is conditioned on the happening of a future event, at the Redemption Price therein specified (together with accrued but unpaid interest, if any, to the Redemption Date), and from and after such Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued but unpaid interest, if any) such Notes shall cease to bear interest.

(b) Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Issuer at the Redemption Price, together with accrued but unpaid interest, if any, to, but excluding, the Redemption Date and such Notes shall be canceled by the Trustee; *provided* that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Regular Record Dates according to their terms and the provisions of Section 3.07.

(c) If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes, unless such redemption is conditioned on the happening of a future event.

SECTION 11.08. Notes Redeemed in Part. Any Note which is to be redeemed only in part (pursuant to the provisions of this Article) shall be surrendered at an office or agency of the Issuer maintained for such purpose pursuant to Section 10.02 (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Issuer shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

ARTICLE TWELVE

GUARANTEES

SECTION 12.01. Guarantees.

(a) Subject to this Article Twelve, each Guarantor jointly and severally, fully, unconditionally and irrevocably guarantees on a senior secured basis the Notes and obligations of the Issuer hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee, and to each of the Trustee and the Notes Collateral Agent for itself and on behalf of such Holder, that:

(1) the principal of (and premium, if any) and interest on the Notes shall be paid in full when due, whether at Stated Maturity, by acceleration or otherwise (including the amount that would become due but for the operation of the automatic stay under section 362(a) of the Bankruptcy Law), together with interest on the overdue principal, if any, and interest on any overdue interest, to the extent lawful, and all other obligations of the Issuer to the Holders, the Trustee or the Notes Collateral Agent hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise,

subject, however, in the case of clauses (1) and (2) above, to the limitation set forth in Section 12.04 hereof.

(b) Each Guarantor hereby agrees (to the extent permitted by applicable law) that its obligations hereunder 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, any release of any other Guarantor, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) Each Guarantor hereby:

(1) waives (to the extent permitted by law) the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer or any other Person, protest, notice and all demands whatsoever and covenants that the Guarantee of such Guarantor shall not be discharged as to any Note except by complete performance of the obligations contained in such Note, this Indenture and such Guarantee;

(2) acknowledges that the Guarantee is a guarantee of payment, performance and compliance when due and not of collection;

(3) agrees that, in the event of a default in payment of principal (or premium, if any) or interest on such Note or in payment of any other obligations hereunder, whether at its Stated Maturity, by acceleration, purchase or otherwise, legal proceedings may be instituted by the Trustee, the Notes Collateral Agent or the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce such Guarantor's Guarantee without first proceeding against the Issuer or any other Guarantor; and

(4) agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee, the Notes Collateral Agent or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the Maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor shall pay to the Trustee for the account of the Holder, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee, the Notes Collateral Agent or any of the Holders.

(d) If any Holder, the Trustee or the Notes Collateral Agent is required by any court or otherwise to return to the Issuer or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or any Guarantor, any amount paid by any of them to the Trustee, Notes Collateral Agent or such Holder, the Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders, the Trustee and the Notes Collateral Agent on the other hand, (1) subject to this Article Twelve, the Maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five hereof for the purposes of the Guarantee of such Guarantor notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any acceleration of such obligation as provided in Article Five hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Guarantee of such Guarantor.

(e) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation, reorganization, should the Issuer 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 Issuer's 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 and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance 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.

(f) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee, the Notes Collateral Agent or any Holder in enforcing any rights under this Section 12.01.

SECTION 12.02. Severability. 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 to the extent permitted by applicable law.

SECTION 12.03. Restricted Subsidiaries. The Issuer shall cause any Restricted Subsidiary required to guarantee payment of the Notes pursuant to the terms and provisions of Section 10.15 to execute and deliver to the Trustee a supplement to this Indenture substantially in the form of Exhibit A hereto in accordance with the provisions of Article Nine of this Indenture pursuant to which such Restricted Subsidiary shall guarantee all of the obligations on the Notes, whether for principal, premium, if any, interest (including interest accruing after the filing of, or which would have accrued but for the filing of, a petition by or against the Issuer under any Bankruptcy Law, whether or not such interest is allowed as a claim after such filing in any proceeding under such law) and other amounts due in connection therewith (including any fees, expenses and indemnities), on a secured senior basis. Upon the execution of any such amendment or supplement, the obligations of the Guarantors and any such Restricted Subsidiary under their respective Guarantees shall become joint and several and each reference to the "Guarantor" in this Indenture shall, subject to Section 12.08, be deemed to refer to all Guarantors, including such Restricted Subsidiary. Such Guarantee shall be released in accordance with Section 8.03 and Section 12.08.

SECTION 12.04. Limitation of Guarantors' Liability. Each Guarantor and, by its acceptance hereof, each Holder confirms that it is the intention of all such parties that the guarantee by each such Guarantor pursuant to its Guarantee does not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Holders and each such Guarantor hereby irrevocably agree that the obligations of such Guarantor under its Guarantee shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to this Section 12.04, result in the obligations of such Guarantor under its Guarantee constituting such fraudulent transfer or conveyance.

SECTION 12.05. Contribution. In order to provide for just and equitable contribution among the Guarantors, the Guarantors agree, *inter se*, that in the event any payment or distribution is made by any Guarantor (a "*Funding Guarantor*") under a Guarantee, such Funding Guarantor shall be entitled to a contribution from all other Guarantors in a *pro rata* amount based on the Adjusted Net Assets (as defined below) of each Guarantor (including the Funding Guarantor) for all payments, damages and expenses incurred by that Funding Guarantor in discharging the Issuer's obligations with respect to the Notes or any other Guarantor's obligations with respect to the Guarantee of such Guarantor. "*Adjusted Net Assets*" of such Guarantor at any date shall mean the lesser of (1) the amount by which the fair value of the property of such Guarantor exceeds the total amount of liabilities, including contingent liabilities (after giving effect to all other fixed and contingent liabilities incurred or assumed on such date), but excluding liabilities under the Guarantee of such Guarantor at such date and (2) the amount by which the present fair salable value of the assets of such Guarantor at such date exceeds the amount that will be required to pay the probable liability of such Guarantor on its debts (after giving effect to all other fixed and contingent liabilities incurred or assumed on such date), excluding debt in respect of the Guarantee of such Guarantor, as they become absolute and matured.

SECTION 12.06. Subrogation. Each Guarantor shall be subrogated to all rights of Holders against the Issuer in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 12.01; *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 Issuer under this Indenture or the Notes shall have been paid in full.

SECTION 12.07. Reinstatement. Each Guarantor hereby agrees (and each Person who becomes a Guarantor shall agree) that the Guarantee provided for in Section 12.01 shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any obligations or interest thereon is rescinded or must otherwise be restored by a Holder to the Issuer upon the bankruptcy or insolvency of the Issuer or any Guarantor.

SECTION 12.08. Release of a Guarantor.

(a) Any Guarantee by a Guarantor shall be automatically and unconditionally released and discharged upon:

(1) in the case of a Guarantor that is a Subsidiary of the Issuer, any sale, exchange, transfer or other disposition (by merger, consolidation, amalgamation, dividend, distribution or otherwise) of (A) the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Subsidiary, or (B) all or substantially all of the assets of such Guarantor to a Person that is not the Issuer or a Subsidiary, in each case, if such sale, exchange, transfer or other disposition is not prohibited by the applicable provisions of this Indenture;

(2) (A) the release or discharge of the guarantee by, or direct obligation of, such Guarantor with respect to the Existing Notes to the extent required by the First Lien/Second Lien Intercreditor Agreement, or (B) the release or discharge of such other guarantee or direct obligation that resulted in the creation of such Guarantee (other than the Existing Notes), except, in the case of clauses (A) and (B), 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 is still a release);

(3) the Issuer exercising its legal defeasance option or covenant defeasance option as described under Section 13.02 or Section 13.03 or if the Issuer's obligations under this Indenture are discharged in accordance with the terms of this Indenture; or

(4) the merger, amalgamation or consolidation of any Guarantor with and into the Issuer or another Guarantor that is the surviving Person in such merger, amalgamation or consolidation, or upon the liquidation of a Guarantor following the transfer of all of its assets to the Issuer or another Guarantor.

(b) Notwithstanding anything to the contrary herein, no Guarantor shall be released from its Guarantee solely by virtue of such person becoming a non-Wholly-Owned Subsidiary unless (A) at the time such Guarantor ceases to be a Wholly-Owned Subsidiary, the primary purpose of such transaction was not to evade the Guarantee requirements, (B) the transaction by which such Guarantor ceased to be a Wholly-Owned Subsidiary was consummated on an arms' length basis with one or more Persons that are not Affiliates of the Issuer, and (C) such transaction otherwise complies with Section 10.10 (with the Issuer being deemed to have made an Investment in such resulting non-Guarantor Subsidiary, and such transaction is a Permitted Investment).

(c) If the Issuer or any Guarantor requires and requests that the Trustee and/or the Notes Collateral Agent, as the case may be, execute and deliver an instrument evidencing a release or discharge of a Guarantor, the Issuer shall provide an Officer's Certificate stating that all conditions precedent to such release or discharge have been satisfied and that such release or discharge is authorized or permitted by the terms of this Indenture. Neither the Trustee nor the Notes Collateral Agent shall have any liability for any such release or discharge in reliance on such Officer's Certificate.

SECTION 12.09. Benefits Acknowledged. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and from its guarantee and waivers pursuant to its Guarantees under this Article Twelve.

SECTION 12.10. Effectiveness of Guarantees. This Indenture shall be effective upon its execution and delivery by the parties hereto.

ARTICLE THIRTEEN

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 13.01. Issuer's Option to Effect Legal Defeasance or Covenant Defeasance. The Issuer may, at its option, at any time, with respect to the Notes, elect to have either Section 13.02 or Section 13.03 be applied to all Outstanding Notes upon compliance with the conditions set forth below in this Article Thirteen.

SECTION 13.02. Legal Defeasance and Discharge.

(a) Upon the Issuer's exercise under Section 13.01 of the option applicable to this Section 13.02, each of the Issuer and the Guarantors shall be deemed to have been discharged from its respective obligations with respect to all Outstanding Notes and the Guarantees and have Liens on the Collateral securing the Notes and the Guarantees released on the date the conditions set forth in Section 13.04 are satisfied (hereinafter, "*Legal Defeasance*").

(b) For this purpose, such Legal Defeasance means that each of the Issuer and the Guarantors shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Notes, which shall thereafter be deemed to be Outstanding only for the purposes of Section 13.05 and the other Sections of this Indenture referred to in (1) and (2) below, and the Guarantees and to have satisfied all its other obligations under such Notes, Guarantees and this Indenture insofar as such Notes are concerned (and the Trustee, at the expense of the Issuer, shall execute such instruments reasonably requested by the Issuer acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders to receive payments in respect of the principal of (and premium, if any, on) and interest on such Notes when such payments are due, solely out of the trust created pursuant to this Indenture;

(2) the Issuer's obligations with respect to such Notes under Section 3.04, Section 3.05, Section 3.06, Section 10.02, and Section 10.03;

(3) the rights, powers, trusts, duties and immunities of the Trustee and the Notes Collateral Agent hereunder, and the obligations of each of the Guarantors and the Issuer in connection therewith; and

(4) this Article Thirteen.

(c) Subject to compliance with this Article Thirteen, the Issuer may exercise its option under this Section 13.02 notwithstanding the prior exercise of its option under Section 13.03 with respect to the Notes.

SECTION 13.03. Covenant Defeasance.

(a) Upon the Issuer's exercise under Section 13.01 of the option applicable to this Section 13.03, each of the Issuer and the Guarantors shall be released from its respective obligations under any covenant contained in Section 8.01 and Section 8.02, and in Section 10.04 through, and including, Section 10.17 with respect to the Outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not to be 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.

(b) For this purpose, such Covenant Defeasance means that, with respect to the Outstanding Notes, the Issuer or any Guarantor, as applicable, 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 5.01(a)(3), and as a result of such Covenant Defeasance, Section 5.01(a)(4), Section 5.01(a)(5), and Section 5.01(a)(7) and, with respect to only any Significant Subsidiary and not the Issuer, Section 5.01(a)(6), shall no longer be in effect but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby.

SECTION 13.04. Conditions to Legal Defeasance or Covenant Defeasance. The following shall be the conditions to application of either Section 13.02 or Section 13.03 to the Outstanding Notes:

(a) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts (including scheduled payments thereon) as will be sufficient (without

consideration of any reinvestment of interest), in the opinion of an Independent Financial Advisor, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the Redemption Date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular Redemption Date;

(b) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions,

(1) the Issuer has received from, or there has been published by, the U.S. Internal Revenue Service a ruling, or

(2) since the issuance of the Notes, 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 Holders or beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, 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 Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the Holders or 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 Default or 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) shall have occurred and be continuing on the date of such deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any other material agreement or material instrument (other than this Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (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);

(f) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(g) the 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 13.05. Deposited Money and Government Securities To Be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to the provisions of Section 10.03(e), all cash and Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 13.04 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 the Issuer acting as its own 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 (and premium, if any) and interest, but such money or Government Securities need not be segregated from other funds except to the extent required by law.

(b) The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Securities deposited pursuant to Section 13.04 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.

(c) Anything in this Article Thirteen to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon Issuer Request any money or Government Securities held by it as provided in Section 13.04 which, in the opinion of a

nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance, as applicable, in accordance with this Article Thirteen.

SECTION 13.06. Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or Government Securities in accordance with Section 13.05 by reason of any order or judgment of any court or Governmental Authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and each Guarantor's obligations under this Indenture and the Outstanding Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.02 or Section 13.03, as the case may be, until such time as the Trustee or Paying Agent is permitted to apply all such money or Government Securities in accordance with Section 13.05; *provided* that, if the Issuer makes any payment of principal of (or premium, if any) or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE FOURTEEN

COLLATERAL

SECTION 14.01. Security Documents.

(a) From and after the Issue Date and upon the execution and delivery of the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, the due and punctual payment of the principal of, premium (including the Exit Premium), additional interest, if any, or interest on the Notes when and as the same shall be due and payable, whether on an interest payment date, at stated maturity thereof, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium (including the Exit Premium), additional interest, if any, or interest on the Notes and performance of all other Obligations of the Issuer and the Guarantors to the Holders, the Trustee or the Notes Collateral Agent under this Indenture, the Notes, the related Guarantees, the First Lien/Second Lien Intercreditor Agreement and the other 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 the Notes Obligations, subject to the terms of the First Lien/Second Lien Intercreditor Agreement.

(b) The Trustee, the Issuer and the Guarantors hereby acknowledge and agree that the Notes Collateral Agent holds a security interest in the Collateral for the benefit of the Notes Secured Parties pursuant to the terms of the Security Documents.

(c) 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/Second Lien Intercreditor Agreement as the same may be in effect or may be amended from time to time in accordance with their terms and this Indenture and the First Lien/Second Lien Intercreditor Agreement, and authorizes and directs the Notes Collateral Agent to enter into the Security Documents (including the First Lien/Second Lien Intercreditor Agreement) or joinders thereto, and at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith.

(d) [Reserved].

(e) [Reserved].

(f) It is further understood and agreed that there shall be no Security Document (or other security agreements or pledge agreements) governed under the laws of any non-U.S. jurisdiction.

SECTION 14.02. Release of Collateral.

(a) The Collateral may be released from the Lien and security interest created by the Security Documents at any time and from time to time with respect to the Notes in accordance with the provisions of the First Lien/Second Lien Intercreditor Agreement, the other Security Documents and this Indenture. Notwithstanding anything to the contrary in the First Lien/Second Lien Intercreditor Agreement, the other Security Documents and this Indenture, the Issuer and the Guarantors shall be entitled to the automatic release of

property and other assets constituting Collateral from the Liens securing the Notes and the Notes Obligations under any one or more of the following circumstances:

(1) to enable the Issuer or any Guarantor to consummate the sale, transfer or other disposition (including by the termination of Capitalized Lease Obligations or the repossession of the leased property in a Capitalized Lease Obligation by the lessor) of such property or assets (other than to the Issuer or any Guarantor) to the extent permitted by this Indenture or the Security Documents;

(2) in the case of a Guarantor that is released from its Guarantee with respect to the Notes pursuant to the terms of this Indenture with respect to the property and other assets of such Guarantor, upon the release of such Guarantor from its Guarantee;

(3) with respect to Collateral that is Capital Stock, upon the dissolution or liquidation of the issuer of that Capital Stock that is not prohibited by this Indenture;

(4) with respect to any Collateral that becomes an Excluded Asset, upon it becoming an Excluded Asset;

(5) as described under the First Lien/Second Lien Intercreditor Agreement; or

(6) as described under Article Nine hereof.

(b) The Liens on the Collateral securing the Notes and the related Guarantees also shall automatically and without the need for any further action by any Person be terminated and released:

(1) upon payment in full and discharge of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations with respect to this Indenture, the related 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;

(2) upon a Legal Defeasance or Covenant Defeasance under this Indenture as described under Section 13.02 and Section 13.03 hereof, respectively, or a satisfaction and discharge of this Indenture as described under Section 4.01 hereof;

(3) upon the release and discharge of the Guarantee by a Guarantor pursuant to Section 12.08; or

(4) pursuant to the applicable provisions of the First Lien/Second Lien Intercreditor Agreement or the other Security Documents.

(c) With respect to any release of Collateral or subordination of the security interest related thereto, upon receipt of an Officer's Certificate (upon which the Trustee and Notes Collateral Agent may conclusively rely) stating that all conditions precedent under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, as applicable, to such release or subordination have been met and that it is permitted for the Trustee and/or the Notes Collateral Agent to execute and deliver the documents requested by the Issuer in connection with such release or subordination and any necessary or proper instruments of termination, satisfaction or release or subordination prepared by the Issuer, the Trustee and the Notes Collateral Agent shall execute, deliver or acknowledge (at the Issuer's expense), without recourse, representations or warranties, such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents.

(d) Neither the Trustee nor the Notes Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate or for any release which, pursuant to the terms of the applicable Security Document, may be effected automatically or by the Issuer, a Guarantor, a collateral trustee or other sub-agent, without further action by or knowledge of the Notes Collateral Agent or the Trustee, and notwithstanding any term hereof, in any other Security Document to the contrary, the Trustee and the Notes Collateral Agent shall not be under any obligation to acknowledge the automatic release of, or release, as applicable, 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.

SECTION 14.03. Suits to Protect the Collateral.

(a) Subject to the provisions of Article Six, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, the Trustee may or may direct the Notes Collateral Agent to take all actions they determine in order to:

(1) enforce any of the terms of the Security Documents; and

(2) collect and receive any and all amounts payable in respect of the Notes Obligations.

(b) Subject to the provisions of the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, 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 First Lien/Second Lien Intercreditor Agreement, the other 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 of the Notes in the Collateral. Nothing in this Section 14.03 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Notes Collateral Agent.

SECTION 14.04. Authorization of Receipt of Funds by the Trustee under the Security Documents. Subject to the provisions of the First Lien/Second Lien Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of the Holders of the Notes distributed under the Security Documents and to make further distributions of such funds to the Holders of such Notes according to the provisions of this Indenture.

SECTION 14.05. 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 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 Fourteen to be sold be under any obligation to ascertain or inquire into the authority of the Issuer or any Guarantor to make any such sale or other transfer.

SECTION 14.06. 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 Fourteen upon the 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 the Issuer or a Guarantor or of any Officer or Officers thereof required by the provisions of this Article Fourteen; 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 such Trustee or such Notes Collateral Agent.

SECTION 14.07. Release Upon Termination of the Issuer's Obligations. In the event that the Issuer delivers to the Trustee and the Notes Collateral Agent an Officer's Certificate certifying that (i) payment in full of the principal of, together with accrued and unpaid interest, if any, on, the Notes and all other Note Obligations that were due and payable at or prior to the time such principal, together with accrued and unpaid interest, if any, were paid, (ii) the Issuer shall have either (x) exercised its Legal Defeasance option or its Covenant Defeasance option with respect to the Notes, in each case in compliance with the provisions of Article Thirteen hereof, or (y) satisfied and discharged this Indenture as to the Notes in compliance with the provisions of Article Four hereof, or (iii) the Liens on the Collateral securing the Notes shall have been released and discharged pursuant to the applicable provisions of the First Lien/ Second Lien Intercreditor Agreement, and (iv) in each case of (i), (ii), and (iii) above, that such release is permitted by this Indenture and the Security Documents, and in each case of (i), (ii), and (iii) above, an Opinion of Counsel stating that all conditions precedent to the release of such Lien on the Collateral by the Trustee and the Notes Collateral Agent have been satisfied, the Trustee and the Notes Collateral Agent shall deliver to the Issuer an acknowledgement of the release or a release, as applicable, of such Lien on the Collateral with respect to the Notes without recourse, representations or warranties and shall do or cause to be done (at the expense of the Issuer) all acts reasonably requested of them to release such Lien as soon as is reasonably practicable.

SECTION 14.08. Notes Collateral Agent.

(a) The Issuer and each of the Holders, by acceptance of the Notes, hereby designate and appoint the Notes Collateral Agent as their agent under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents and the Issuer and each of the Holders, by acceptance of the Notes, hereby irrevocably authorize the Notes Collateral Agent to take such action on their behalf under the provisions of this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents 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 First Lien/Second Lien Intercreditor Agreement and the other Security Documents and consent and agree to the terms of the First Lien/Second Lien Intercreditor Agreement and each other 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 14.08. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provisions of this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other 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 First Lien/Second Lien Intercreditor Agreement and the other Security Documents, 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, in the First Lien/Second Lien Intercreditor Agreement and in the other Security Documents to which such 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, the Issuer or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents 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 First Lien/Second Lien Intercreditor Agreement and the other Security Documents by or through receivers, agents, nominees, collateral trustees, 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 (each, a "*Related Person*"), and shall be entitled to advice of counsel or other relevant experts (as reasonably required) 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 or other relevant experts (as reasonably required). 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. The Notes Collateral Agent shall not be liable for any error of judgment made in good faith by it, unless it shall be proved that the Notes Collateral Agent was grossly negligent in ascertaining the pertinent facts.

(c) Neither the Notes Collateral Agent nor its Related Persons shall 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 Guarantor or Affiliate of the Issuer or any Guarantor, or any Officer or Related Person thereof, contained in this Indenture, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents, 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/Second Lien Intercreditor Agreement or the other Security Documents, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents, or for any failure of the Issuer or any Guarantor or any other party to this Indenture, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents to perform its obligations hereunder or thereunder. None of the Notes Collateral Agent or any of their 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 First Lien/Second Lien Intercreditor Agreement or the other Security Documents or to inspect the properties, books or records of the Issuer or any Guarantor or any of the Issuer's or Guarantor'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 Issuer or any Guarantor), 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 First Lien/Second Lien Intercreditor Agreement or the other Security Documents unless it shall first receive such advice or concurrence of the Trustee or the Required Holders as it determines and, if it so requests, it shall first be offered (and receive) security or indemnity 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 First Lien/Second Lien Intercreditor Agreement or the other Security Documents in accordance with a request, direction, instruction or consent of the Trustee or the Required Holders 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 such Notes Collateral Agent shall have received written notice from the Trustee or the Issuer referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." 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 Five or the Required Holders (subject to this Section 14.08).

(f) The Notes Collateral Agent may resign at any time by providing 30 days' written notice to the Trustee and the Issuer, such resignation to be effective upon the acceptance of a successor agent to its appointment as a Notes Collateral Agent. If a Notes Collateral Agent resigns under this Indenture, the Issuer shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of such Notes Collateral Agent (as stated in the notice of resignation), the Trustee, at the direction of the Holders of a majority of the aggregate principal amount of the then Outstanding Notes, and at the sole expense of the Issuer, may appoint a successor collateral agent, subject to the consent of the 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 Issuer pursuant to the preceding sentence within 30 days after the intended effective date of resignation (as stated in the notice of resignation), the retiring 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 a Notes Collateral Agent shall be terminated. After the retiring Notes Collateral Agent's resignation hereunder, the provisions of this Section 14.08 (and Section 6.07 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 a Notes Collateral Agent under this Indenture. If at any time the Notes Collateral Agent shall merge, consolidate or transfer substantially all of its assets to another entity, such other entity shall be the successor Notes Collateral Agent in accordance with Section 6.11, with the references therein to "Trustee" being deemed references to "Notes Collateral Agent."

(g) Except as otherwise explicitly provided herein or in the First Lien/Second Lien Intercreditor Agreement or the other Security Documents, 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 respective officers, directors or employees shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

(h) By their acceptance of the Notes, each Holder is deemed to authorize and direct the Notes Collateral Agent (and Trustee, if applicable) to (i) enter into the First Lien/Second Lien Intercreditor Agreement (including pursuant to joinders thereto), (ii) enter into the other Security Documents to which it is party, whether executed on or after the Issue Date, (iii) bind the Notes Secured Parties on the

terms as set forth in the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, and (iv) perform and observe its obligations under the First Lien/Second Lien Intercreditor Agreement and the other Security Documents.

(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 Five, such 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 such Notes Collateral Agent pursuant to the terms of this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents.

(j) Other than as set forth in the First Lien/Second Lien Intercreditor Agreement (and/or any collateral trust agreement entered into pursuant to the provisions thereof), the Notes Collateral Agent is the party in whose name the security interest, for the benefit of the Holders, shall be perfected, including for assets that can be perfected only by possession in accordance with Article 9 of the Uniform Commercial Code. Should the Trustee obtain possession of any such Collateral, upon request from the Issuer, such Trustee shall notify the Notes Collateral Agent thereof and promptly shall 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 the Issuer or any Guarantor or is cared for, protected or insured or has been encumbered, or that the Notes Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all or the Issuer's or such Guarantor's property constituting Collateral intended to be subject 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 Collateral Agent pursuant to this Indenture, the First Lien/Second Lien Intercreditor Agreement and any other Security Documents other than pursuant to the instructions of the Trustee or the Required Holders or as otherwise provided in the Security Documents.

(l) [Reserved].

(m) [Reserved].

(n) No provision of this Indenture, the First Lien/Second Lien Intercreditor Agreement or any other 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 they shall have received indemnity 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/Second Lien Intercreditor Agreement or the other 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, such 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 such Notes Collateral Agent has determined that such 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 if it no longer reasonably deems any indemnity, security or undertaking from the Issuer or the Holders to be sufficient.

(o) The Notes 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/Second Lien Intercreditor Agreement and the other 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, (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 Issuer (and money held in trust by the Notes Collateral Agent need not be segregated from other funds except to the extent required by law), and (iii) may consult with counsel and with accountants, investment bankers and other professionals (as reasonably required), in each case, of its selection and the advice or opinion of such counsel and such

accountant, investment banker or other professional 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, authorizations and powers to the Notes Collateral Agent (including the exercise of any remedies following an Event of Default) shall not be construed to impose duties to act.

(p) The Notes Collateral Agent shall not be liable for delays or failures in performance resulting from acts caused by, directly or indirectly, forces beyond their control. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. The Notes Collateral Agent shall not be liable for any indirect, special, punitive, incidental or consequential damages (including, but not limited to, lost profits) whatsoever, even if they have been informed of the likelihood thereof and regardless of the form of action.

(q) The Notes Collateral Agent does not assume any responsibility for any failure or delay in the performance or any breach by the Issuer or any Guarantor under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other 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 First Lien/Second Lien Intercreditor Agreement, the other Security Documents 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/Second Lien Intercreditor Agreement or any other Security Document; the execution, validity, genuineness, effectiveness or enforceability of the First Lien/Second Lien Intercreditor Agreement and any other 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/Second Lien Intercreditor Agreement and the other 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/Second Lien Intercreditor Agreement and the other Security Documents or the satisfaction of any conditions precedent contained in this Indenture, the First Lien/Second Lien Intercreditor Agreement and any other Security Documents. Neither the Notes Collateral Agent nor the Trustee shall be required to initiate or conduct any litigation or collection or other proceeding under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents unless expressly directed to do so by the Required Holders and adequately indemnified with respect thereto. 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 First Lien/Second Lien Intercreditor Agreement and the other Security Documents.

(r) 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/Second Lien Intercreditor Agreement, the other 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/Second Lien Intercreditor Agreement and the other 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 such Notes Collateral Agent's or such 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, provincial or local law, the Notes Collateral Agent and the Trustee reserves the right, instead of taking such action, to either resign as a Notes Collateral Agent or a 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 Issuer, the Guarantors or any other Person for any environmental claims or contribution actions under any federal, state, provincial or local law, rule or regulation by reason of such Notes Collateral Agent's or such 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 Issuer or the Guarantors, Required Holders shall direct the Notes Collateral Agent or the Trustee 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.

(s) Upon the receipt by the Notes Collateral Agent of a written request of the Issuer signed by an Officer (a "*Security Document Order*"), such 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 or amendment or supplement thereto, to be executed after the Issue Date. 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 14.08(s), and (ii) instruct such Notes Collateral Agent to execute and enter into such Security Document or amendment or supplement thereto. Any such execution of a Security Document or amendment or supplement thereto shall be at the direction and expense of the Issuer, 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 or amendment or supplement thereto have been satisfied and execution and delivery of the Security Document or amendment or supplement thereto is authorized or permitted by the terms of this Indenture and the Security Document. The Holders, by their acceptance of the Notes, hereby authorize and direct the Notes Collateral Agent to execute such Security Documents, the First Lien/Second Lien Intercreditor Agreement (including by way of joinder), including any amendments, supplements or waivers thereto.

(t) Subject to the provisions of the First Lien/Second Lien Intercreditor Agreement and other Security Documents, each Holder, by acceptance of the Notes, agrees that the Notes Collateral Agent shall execute and deliver the First Lien/Second Lien Intercreditor Agreement and the other Security Documents to which they are parties 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/Second Lien Intercreditor Agreement or the other Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Required Holders or the Trustee, as applicable.

(u) 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 then Outstanding Notes, may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture, the First Lien/Second Lien Intercreditor Agreement or the other Security Documents. For purposes of clarity, (i) the Trustee shall have no obligation to provide any such direction to the Notes Collateral Agent (or any other collateral agent or collateral trustee) in the absence of such direction from the Holders of a majority of the aggregate principal amount of the then Outstanding Notes and the Trustee's receipt of indemnity satisfactory to it, and (ii) any indemnity required to be provided to the Notes Collateral Agent (or any other collateral agent or collateral trustee) in connection with such direction shall be an obligation of such Holders and not of the Trustee. No Notes Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of such Notes Collateral Agent shall have received written notice from the Trustee or the Issuer referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." Such 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 Five or the Required Holders (subject to this Section 14.08).

(v) The Notes Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the First Lien/Second Lien Intercreditor Agreement and the other Security Documents and, to the extent not prohibited under the First Lien/Second Lien Intercreditor Agreement, 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 5.06 and the other provisions of this Indenture.

(w) In each case that the Notes Collateral Agent may or is required hereunder or under the First Lien/Second Lien Intercreditor Agreement or any other Security Document 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 the First Lien/Second Lien Intercreditor Agreement or any other Security Document, such Notes Collateral Agent may seek direction

from the Required Holders. 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 Required Holders. If the Notes Collateral Agent shall request direction from the Required Holders with respect to any Action, such Notes Collateral Agent shall be entitled to refrain from such Action unless and until such Notes Collateral Agent shall have received direction from the Required Holders and, if deemed necessary by the Notes Collateral Agent, adequate indemnity, and such Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(x) Notwithstanding anything to the contrary in this Indenture, in the First Lien/Second Lien Intercreditor Agreement or in any other Security Document, 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 First Lien/Second Lien Intercreditor Agreement or the other Security Documents (including, without limitation, the filing, continuation or renewal of any Uniform Commercial Code financing statement or amendments thereto), nor shall the Notes Collateral Agent or the Trustee be responsible for, and neither the Notes Collateral Agent nor the Trustee make 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.

(y) Before the Notes Collateral Agent acts or refrains from acting in each case at the request or direction of the Issuer or the Guarantors, it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of this Section 14.08.

(z) Notwithstanding anything to the contrary contained herein, the Notes Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee solely with respect to the Security Documents and the Collateral.

(aa) 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 was named as a Trustee herein and the Security Documents were named in this Indenture herein; *provided*, *however*, (i) a Notes Collateral Agent shall only be liable to the extent of its gross negligence or willful misconduct; and (ii) in and during an Event of Default, only the Trustee, and not any Notes Collateral Agent, shall be subject to the prudent person standard.

(bb) Subject to the provisions of the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, each Holder, by acceptance of the Notes, agrees that the Notes Collateral Agent shall execute and deliver the First Lien/Second Lien Intercreditor Agreement and the other Security Documents to which it is a party and all agreements, documents and instruments incidental thereto (including any releases permitted hereunder), and act in accordance with the terms thereof. For the avoidance of doubt, the Notes Collateral Agent shall not be required to exercise discretion under this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Required Holders or the Trustee, as applicable, except as otherwise expressly provided for herein or in any Security Document.

(cc) For purposes of clarity, phrases such as "satisfactory to the Notes Collateral Agent," "approved by the Notes Collateral Agent," "acceptable to the Notes Collateral Agent," "as determined by the Notes Collateral Agent," "in the Notes Collateral Agent's discretion," "selected by the Notes Collateral Agent," "requested by the Notes Collateral Agent," and phrases of similar import authorize and permit the Notes Collateral Agent to approve, disapprove, determine, act or decline to act in its reasonable discretion. The Notes Collateral Agent shall not be required to take any action that, in its reasonable opinion, which may be the opinion of its counsel, may expose the Notes Collateral Agent to liability or that is contrary to this Indenture, any Security Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy or insolvency law. 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 and to the extent not prohibited under the First Lien/Second Lien Intercreditor Agreement for turnover to the Trustee to make further distributions of such funds to itself, the other Notes Collateral Agent, the Trustee and the Holders in accordance with the provisions of Section 5.06 hereof and the other provisions of this Indenture.

(dd) The Issuer shall pay compensation to, reimburse expenses of and indemnify the Notes Collateral Agent in accordance with Section 6.07. Accordingly, the reference to the "Trustee" in Section 6.07 shall be deemed to include the reference to the Notes Collateral Agent; *provided*, *however*, with respect to the Notes Collateral Agent, references to "negligence" shall be deemed referenced to "gross negligence."

(ee) In the event of any dispute between or conflicting claims among any the Issuer, Guarantors, or any party to the Security Documents and any other person or entity with respect to any Collateral, the Notes Collateral Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such Collateral so long as such dispute or conflict shall continue, and the Notes Collateral Agent shall not be or become liable in any way to the Issuer, any Guarantor, any party to the Security Documents or any Holder for failure or refusal to comply with such conflicting claims, demands or instructions. The Notes Collateral Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Notes Collateral Agent, or (ii) the Notes Collateral Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Notes Collateral Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, the Issuer and the other Guarantors to the extent provided for in Section 6.07 and Section 14.08(dd). The Notes Collateral Agent shall have no responsibility for the contents of any writing of any arbitrators or any third party contemplated in any Security Documents as a means to resolve disputes and may conclusively rely without any liability upon the contents thereof.

(ff) The Notes Collateral Agent shall incur no liability as a result of the sale (whether public or private) of the Collateral or any part thereof at any sale pursuant to this Agreement conducted in a commercially reasonable manner. Each of the Issuer, the Guarantors and the Notes Secured Parties hereby waive any claims against the Notes Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such sale (whether public or private) was less than the price that might have been obtained otherwise, even if the Notes Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, so long as such sale is conducted in a commercially reasonable manner. Each of the Issuer, the Guarantors and the Notes Secured Parties hereby agree that in respect of any sale of any of the Collateral pursuant to the terms hereof, Notes Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and the Issuer, the Guarantors and the Notes Secured Parties further agree that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Notes Collateral Agent be liable or accountable to the Issuer, the Guarantors or the Notes Secured Parties for any discount allowed by reason of the fact that the Collateral or any part thereof is sold in compliance with any such limitation or restriction.

SECTION 14.09. Other Limitations and Protections.

(a) Liens required to be granted from time to time pursuant to this Indenture shall be subject to exceptions and limitations set forth in the Security Documents.

(b) In providing any direction to the Notes Collateral Agent hereunder, the Trustee shall be entitled (or required, as the case may be) to first obtain direction from the requisite Holders to the extent required under this Indenture or the Security Documents.

SECTION 14.10. Further Assurances; Maintenance of Properties; Compliance with Laws; Insurance.

(a) The Issuer and each of the Guarantors shall undertake, or cause to be undertaken, all acts reasonably necessary (as determined in good faith by the Issuer), or as the Notes Collateral Agent shall reasonably request, to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such Security Document in accordance with all applicable law (as determined in good faith by the Issuer).

(b) Subject to the applicable limitations set forth in this Indenture and the other Note Documents (including with respect to Excluded Assets), the Issuer and each of the Guarantors shall execute any and all further documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or that the Notes Collateral Agent may reasonably request (at the direction of the Required Holders) or that this Indenture or the Collateral Documents may require, in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents in the Collateral. Subject to the applicable limitations set forth in the Security Documents, the First Lien/Second Lien Intercreditor Agreement and this Indenture (including with respect to Excluded Assets), if (i) the Issuer or a Guarantor acquires property that does

not automatically become subject to a perfected security interest under the Security Documents or (ii) any Person, subsequent to the Issue Date, becomes a Guarantor under this Indenture, then, in each case, the Issuer or such Guarantor will provide security, with the priority required by this Indenture, in favor of the Notes Collateral Agent over such acquired property or such new Guarantor's assets, as applicable, to the extent that such property or assets would constitute Collateral under the Security Documents, and deliver certain joinder agreements or supplements, mortgages, deeds of trust, financing statements and certificates, title insurance policies, surveys, opinions of local counsel and other documents as required by this Indenture, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents, in each case, within 120 days after such obligations arise hereunder or as soon as practicable thereafter using commercially reasonably efforts as determined in good faith by the Issuer or such Guarantor.

(c) The Issuer and the Guarantors shall:

(1) keep their properties adequately insured at all times by financially sound and reputable insurers;

(2) maintain such other insurance, to such extent and against such risks, as is customary with companies in the same or similar businesses operating in the same or similar locations;

(3) maintain such other insurance as may be required by law; and

(4) with respect to each Mortgaged Property, obtain flood insurance in such total amount as may reasonably be required by the Notes Collateral Agent, if at any time the area in which any improvements located on any Mortgaged Property is designated a "special flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

(d) Subject to any applicable limitations set forth in the Security Documents and this Indenture, if any Material Real Property is acquired by the Issuer or any Guarantor after the Issue Date, the Issuer will notify the Notes Collateral Agent, and, if requested by the Notes Collateral Agent (including on the instruction of the Required Holders), the Issuer shall cause such Material Real Property to be subjected to a Lien securing the Obligations (and, in the event any mortgage is delivered pursuant to this clause (d), shall incur any mortgage recording tax or similar charges in connection with the recording thereof, such mortgage shall not secure an amount in excess of the fair market value of the applicable Mortgaged Property) and shall take, and cause the other applicable Guarantors to take, such actions as shall be necessary or reasonably requested by the Notes Collateral Agent (acting at the direction of the Required Holders), as soon as commercially reasonable but in no event later than 60 days, unless extended by the Notes Collateral Agent acting at the direction of the Required Holders, to grant and perfect such Liens consistent with the applicable requirements of the Security Documents, including actions described in Section 14.10(a).

(e) Any mortgage delivered to the Trustee in accordance with Section 14.10(d) shall, if requested by the Notes Collateral Agent (acting at the direction of the Required Holders), be received as soon as commercially reasonable but in no event later than 60 days, unless extended by the Notes Collateral Agent (acting at the direction of the Required Holders) and accompanied by (1) a policy or policies (or an unconditional binding commitment therefor to be replaced by a final title policy) of title insurance issued by a nationally recognized title insurance company, in such amounts as reasonably acceptable to the Trustee (including on the instruction of the Required Holders) not to exceed the fair market value of the applicable Mortgaged Property, insuring the Lien of each mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as permitted by Section 10.12 or as otherwise permitted by the Trustee (including on the instruction of the Required Holders) and otherwise in form and substance reasonably acceptable to the Trustee (including on the instruction of the Required Holders) and the Issuer, together with such endorsements, coinsurance and reinsurance as the Trustee (acting at the direction of the Required Holders) may reasonably request but only to the extent such endorsements are (A) available in the relevant jurisdiction (provided in no event shall the Trustee request a creditors' rights endorsement), and (B) available at commercially reasonable rates, (2) an opinion of local counsel to the applicable Guarantors in form and substance reasonably acceptable to the Trustee (including on the instruction of the Required Holders), (3) a completed "Life of Loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and if any improvements on such Mortgaged Property are located in a special flood hazard area, (A) a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Guarantors, and (B) certificates of insurance evidencing the insurance required by Section 14.10(c) in form and substance reasonably satisfactory to the Trustee (including on the instruction of the Required Holders), and (4) an ALTA survey in a form and substance reasonably acceptable to the Notes Collateral Agent or such existing survey together with a no change affidavit

sufficient for the title company to remove all standard survey exceptions from the title policy related to such Mortgaged Property and issue the endorsements required in clause (1) above.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

ACCELERATE DIAGNOSTICS, INC.,
as Issuer

By: /s/ Jack Phillips
Name: Jack Phillips
Title: Chief Executive Officer

[Signature Page – Indenture]

The undersigned agrees to act as Trustee, Notes Collateral Agent, Paying Agent, Note Registrar and Transfer Agent:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee and as Notes Collateral Agent

By: /s/ Mary Ambriz-Reyes
Name: Mary Ambriz-Reyes
Title: Vice President

[Signature Page – Indenture]

ANNEX I
- Rule 144A / Regulation S Appendix

PROVISIONS RELATING TO INITIAL NOTES

1. Definitions

1.1 Definitions.

For the purposes of this Appendix the following terms shall have the meanings indicated below:

"*Applicable Procedures*" means, with respect to any transfer or transaction involving a Temporary Regulation S Global Note or beneficial interest therein, the rules and procedures of the Depository for such a Temporary Regulation S Global Note, to the extent applicable to such transaction and as in effect from time to time.

"*Definitive Note*" means a certificated Note or PIK Note bearing, if required, the appropriate restricted notes legend set forth in Section 2.3(d) hereto.

"*Depository*" means The Depository Trust Company, its nominees and their respective successors.

"*Distribution Compliance Period*" means, with respect to any Notes, the period of 40 consecutive days beginning on and including the latest of the Issue Date, the original issue date of the issuance of any Additional Notes and the date on which any such Notes (or any predecessor of such Notes) were first offered to persons other than distributors (as defined in Rule 902 of Regulation S) in reliance on Regulation S.

"*Interest Payment Date*" has the meaning specified in the Indenture.

"*Interest Period*" has the meaning specified in the Indenture.

"*non-U.S. Person*" means a Person who is not a U.S. Person.

"*Notes*" means collectively (1) $15,000,000 aggregate principal amount of Super-Priority Senior Secured PIK Notes Due 2025 issued on the Issue Date, (2) any PIK Notes and (3) any Additional Notes. The Initial Notes, the PIK Notes and the Additional Notes shall be treated as a single class for all purposes of the Indenture.

"*Notes Custodian*" means the custodian with respect to a Global Notes (as appointed by the Depository), or any successor Person thereto and shall initially be the Trustee.

"*PIK Interest*" has the meaning specified in the Indenture.

"*PIK Notes*" has the meaning specified in the Indenture.

"*PIK Payment*" means any payment of PIK Interest on any Interest Payment Date for the Interest Period ended on such Interest Payment Date.

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

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Transfer Restricted Notes*" means Notes that bear or are required to bear the legend relating to restrictions on transfer relating to the Securities Act set forth in Section 2.3(d) hereto.

1.2 Other Definitions.

Term	Defined in Section:
"*Agent Members*"	2.1(b)
"*Global Notes*"	2.1(a)
"*Permanent Regulation S Global Note*"	2.1(a)
"*Regulation S*"	2.1(a)
"*Regulation S Global Note*"	2.1(a)
"*Rule 144A*"	2.1(a)
"*Rule 144A Global Note*"	2.1(a)
"*Temporary Regulation S Global Note*"	2.1(a)

2. The Notes.

2.1 (a) Form and Dating. The Notes will be resold initially only to (i) QIBs in reliance on Rule 144A under the Securities Act ("*Rule 144A*") and (ii) Persons other than U.S. Persons (as defined in Regulation S) outside the United States in reliance on Regulation S under the Securities Act ("*Regulation S*"). Notes may thereafter be transferred to, among others, QIBs and purchasers in reliance on Regulation S, subject to the restrictions on transfer set forth herein. Notes initially resold pursuant to Rule 144A shall be issued initially in the form of one or more permanent global notes in fully registered form (collectively, the "*Rule 144A Global Note*"); and Notes initially resold pursuant to Regulation S shall be issued initially in the form of one or more temporary global notes in fully registered form (collectively, the "*Temporary Regulation S Global Note*"), in each case without interest coupons and with the global notes legend and the applicable restricted notes legend set forth in Exhibit 1 hereto, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Notes Custodian and registered in the name of the Depository, duly executed by the Issuer and authenticated by the Trustee as provided in the Indenture. Except as set forth in this Section 2.1(a), beneficial ownership interests in the Temporary Regulation S Global Note will not be exchangeable for interests in a Rule 144A Global Note, a permanent global note (the "*Permanent Regulation S Global Note*" and, together with the Temporary Regulation S Global Note, the "*Regulation S Global Note*") or any other Note prior to the expiration of the Distribution Compliance Period and then, after the expiration of the Distribution Compliance Period, may be exchanged for interests in a Rule 144A Global Note, the Permanent Regulation S Global Note or a Definitive Note only (i) upon certification in form reasonably satisfactory to the Issuer and the Trustee that beneficial ownership interests in such Temporary Regulation S Global Note are owned either by non-U.S. persons or U.S. persons who purchased such interests in a transaction that did not require registration under the Securities Act, and (ii) in the case of an exchange for a Definitive Note, in compliance with the requirements of Section 2.4(a) hereof.

Beneficial interests in Temporary Regulation S Global Notes may be exchanged for interests in Rule 144A Global Notes if (1) such exchange occurs in connection with a transfer of Notes in compliance with Rule 144A and (2) the transferor of the beneficial interest in the Temporary Regulation S Global Note first delivers to the Trustee a written certificate (in a form satisfactory to the Issuer and the Trustee) to the effect that the beneficial interest in the Temporary Regulation S Global Note is being transferred to a Person (a) whom the transferor reasonably believes to be a QIB, (b) purchasing for its own account or the account of a QIB in a transaction meeting the requirements of Rule 144A, and (c) in accordance with all applicable securities laws of the States of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, whether before or after the expiration of the Distribution Compliance Period, only if the transferor first delivers to the Trustee a written certificate (in a form satisfactory to the Issuer and the Trustee) to the effect that such transfer is being made in accordance with Rule 903 or Rule 904 of Regulation S.

The Rule 144A Global Note, the Temporary Regulation S Global Note and the Permanent Regulation S Global Note are collectively referred to herein as "*Global Notes*." PIK Notes received as PIK Interest in respect of Rule 144A Global Notes, Temporary Regulation S Global Notes and Permanent Regulation S Global Notes shall constitute Rule 144A Global Notes, Temporary Regulation S Global Notes and Permanent Regulation S Global Notes, respectively. The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a Global Note deposited with or on behalf of the Depository.

The Issuer shall execute and the Trustee shall, in accordance with Section 2.2 below and Section 2.02 of the Indenture, authenticate and deliver initially one or more Global Notes that (a) shall be registered in the name of the Depository and (b) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee as custodian for the Depository.

Members of, or participants in the Depository ("*Agent Members*") shall have no rights under the Indenture with respect to any Global Note held on their behalf by the Depository or by the Trustee as the custodian of the Depository or under such Global Note, and the Issuer, the Trustee and any agent of the Issuer or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(c) Definitive Notes. Except as provided in this Section 2.1, Section 2.3, or Section 2.4, owners of beneficial interests in Global Notes shall not be entitled to receive physical delivery of Definitive Notes.

2.2 Authentication. The Trustee shall authenticate and deliver: (1) on the Issue Date, $15,000,000 aggregate principal amount of Super-Priority Senior Secured PIK Notes Due 2025, (2) any PIK Notes and (3) any Additional Notes for an original issue, in each case, in an aggregate principal amount specified in an Issuer Order pursuant to Section 2.02 of the Indenture. Such Issuer Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated and, in the case of issuances of any (1) PIK Notes pursuant to Section 3.07 of the Indenture, shall certify that such issuances are in compliance with Section 3.07 of the Indenture, and (2) Additional Notes pursuant to Section 3.13 of the Indenture, shall certify that such issuances are in compliance with Section 10.11 of the Indenture.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Definitive Notes. When Definitive Notes are presented to the Note Registrar with a request:

(A) to register the transfer of such Definitive Notes; or

(B) to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations,

the Note Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided*, *however*, that the Definitive Notes surrendered for transfer or exchange:

(i) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer and the Note Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(ii) if such Definitive Notes are required to bear a restricted notes legend, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act, pursuant to Section 2.3(b) or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Definitive Notes are being delivered to the Note Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Definitive Notes are being transferred to the Issuer, a certification to that effect; or

(C) if such Definitive Notes are being transferred (x) pursuant to an exemption from registration in accordance with Rule 144A or Regulation S; or (y) in reliance upon another exemption from the requirements of the Securities Act: (i) a certification to that effect (in the form set forth on the reverse of the Note) and (ii) if the Issuer so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.3(d).

(b) Restrictions on Transfer of a Definitive Note for a Beneficial Interest in a Global Note. A Definitive Note may not be exchanged for a beneficial interest in a Rule 144A Global Note or a Regulation S Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(i) certification, in the form set forth on the reverse of the Note, that such Definitive Note is either (A) being transferred to a QIB in accordance with Rule 144A or (B) being transferred after expiration of the Distribution Compliance Period by a Person who initially purchased such Note in reliance on Regulation S to a buyer who elects to hold its interest in such Note in the form of a beneficial interest in the Regulation S Global Note; and

(ii) written instructions directing the Trustee to make, or to direct the Notes Custodian to make, an adjustment on its books and records with respect to such Rule 144A Global Note (in the case of a transfer pursuant to clause (b)(i)(A)) or

Regulation S Global Note (in the case of a transfer pursuant to clause (b)(i)(B)) to reflect an increase in the aggregate principal amount of the Notes represented by the Rule 144A Global Note or Regulation S Global Note, as applicable, such instructions to contain information regarding the Agent Member account to be credited with such increase,

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then the Trustee shall cancel such Definitive Note and cause, or direct the Notes Custodian to cause, in accordance with the standing instructions and procedures of the Depository and the Notes Custodian, the aggregate principal amount of Notes represented by the Rule 144A Global Note or Regulation S Global Note, as applicable, to be increased by the aggregate principal amount of the Definitive Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Rule 144A Global Note or Regulation S Global Note, as applicable, equal to the principal amount of the Definitive Note so canceled. If no Rule 144A Global Notes or Regulation S Global Notes, as applicable, are then outstanding, the Issuer shall issue and the Trustee shall authenticate, upon written order of the Issuer in the form of an Officer's Certificate of the Issuer, a new Rule 144A Global Note or Regulation S Global Note, as applicable, in the appropriate principal amount.

(c) Transfer and Exchange of Global Notes.

(i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depository, in accordance with the Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Note shall deliver to the Note Registrar a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in the Global Note. The Note Registrar shall, in accordance with such instructions instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the Global Note and to debit the account of the Person making the transfer the beneficial interest in the Global Note being transferred. The Note Registrar shall have no responsibilities with respect to transfers of beneficial interests within a single Global Note.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Note to a beneficial interest in another Global Note, the Note Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Note Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Note from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(iv) In the event that a Global Note is exchanged for a Definitive Note pursuant to Section 2.4 of this Appendix, such Notes may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 (including the certification requirements set forth on the reverse of the Notes intended to ensure that such transfers comply with Rule 144A, Regulation S or another applicable exemption under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Issuer.

(v) During the Distribution Compliance Period, beneficial ownership interests in Temporary Regulation S Global Notes may only be sold, pledged or transferred in accordance with the Applicable Procedures and only (i) to the Issuer, (ii) in an offshore transaction in accordance with Regulation S (other than a transaction resulting in an exchange for an interest in a Permanent Regulation S Global Note) or (iii) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any State of the United States.

(d) Legend. Each Note certificate evidencing the Global Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form.

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY 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, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, (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 SECURITY IN AN "OFFSHORE TRANSACTION" PURSUANT TO RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT ("REGULATION S") AND (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH SECURITY, ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME OR BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT 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 UNDER THE SECURITIES ACT, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (OTHER THAN PURSUANT TO RULE 144), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR CLAUSE (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

Each Note being sold pursuant to Regulation S shall also bear an additional legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD OR DELIVERED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON, UNLESS SUCH NOTES ARE REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS THEREOF IS AVAILABLE. THIS LEGEND WILL BE REMOVED AFTER THE EXPIRATION OF FORTY DAYS FROM THE LATER OF (i) THE DATE ON WHICH THESE NOTES WERE FIRST OFFERED AND (ii) THE DATE OF ISSUE OF THESE NOTES.

Each Definitive Note shall also bear the following additional legend:

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

(e) Cancellation or Adjustment of Global Note. At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, redeemed, purchased or canceled, such Global Note shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for certificated Notes, redeemed, purchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Notes Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Notes Custodian, to reflect such reduction.

(f) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, 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 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 any Global Note shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. 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.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among the Depository participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

2.4 Definitive Notes.

(a) A Global Note deposited with the Depository or with the Trustee as Notes Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time such Depository ceases to be a "clearing agency" registered under the Exchange Act and, in each case, a successor depository is not appointed by the Issuer within 90 days of such notice, or of its becoming aware of such cessation, or (ii) a Default has occurred and is continuing or (iii) the Issuer, in its sole discretion, and subject to the procedures of the Depository, notifies the Trustee in writing that it elects to cause the issuance of Definitive Notes under the Indenture.

(b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its principal Corporate Trust Office to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of $1.00 principal amount and any integral multiple of $1.00 in excess thereof and registered in such names as the Depository shall direct. Any Definitive Note delivered in exchange for an interest in the Transfer Restricted Note shall bear the applicable restricted notes legend and definitive notes legend set forth in Exhibit 1 hereto.

(c) The registered Holder of a Global Note shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Notes.

(d) In the event of the occurrence of one of the events specified in Section 2.4(a) hereof, the Issuer shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons. In the event that such Definitive Notes are not issued, the Issuer expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to the Indenture, including pursuant to Section 5.07, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner's Notes as if such Definitive Notes had been issued.

EXHIBIT 1
to Annex I

[FORM OF FACE OF INITIAL NOTE]

[Global Notes Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("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 IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS 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.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO THE DEPOSITORY, TO NOMINEES OF THE DEPOSITORY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Restricted Notes Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY 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, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, (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 SECURITY IN AN "OFFSHORE TRANSACTION" PURSUANT TO RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT ("REGULATION S") AND (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH SECURITY, ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME OR BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT 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 UNDER THE SECURITIES ACT, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (OTHER THAN PURSUANT TO RULE 144), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR CLAUSE (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

[Additional Regulation S Restricted Notes Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD OR DELIVERED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON, UNLESS SUCH NOTES ARE REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS THEREOF IS AVAILABLE. THIS LEGEND WILL BE REMOVED AFTER THE EXPIRATION OF FORTY DAYS FROM THE LATER OF (i) THE DATE ON WHICH THESE NOTES WERE FIRST OFFERED AND (ii) THE DATE OF ISSUE OF THESE NOTES.

[Definitive Notes Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

Super-Priority Senior Secured PIK Note Due 2025

No. _____

Rule 144A CUSIP No.: [●]
Rule 144A ISIN: [●]

Regulation S CUSIP No.: [●]
Regulation S ISIN: [●]

Accelerate Diagnostics, Inc., a Delaware corporation (the "*Issuer*"), promises to pay to [Cede & Co.][1], or its registered assigns, the principal sum of [•] U.S. dollars, [as revised by the Schedule of Increases or Decreases in Global Note attached hereto, including for PIK Interest,][1] plus the Exit Premium, on December 31, 2025.

Interest Payment Dates: the last Business Day of each March, June, September and December, commencing September 30, 2024.

Regular Record Dates: March 15, June 15, September 15 and December 15.

Additional provisions of this Note are set forth on the other side of this Note.

1 Insert in Global Notes only.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed.

ACCELERATE DIAGNOSTICS, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Date: _____ By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF INITIAL NOTE]
Super-Priority Senior Secured PIK Note Due 2025

1. Principal and Interest.

The Issuer shall pay the principal of this Note and the Exit Premium as set forth in Section 10.01 of the Indenture on December 31, 2025.

The Issuer promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth below, at the Interest Rate per annum.

The Notes shall bear interest at the rate of 16.00% per annum from the Issue Date. With respect to each Interest Period, the Interest Rate per annum shall be payable by increasing the aggregate principal amount of one or more outstanding Global Notes representing the Initial Notes or issuing PIK Notes, calculated based on the outstanding principal of the Notes as of the beginning of the applicable Interest Period rounded down to the nearest $1.00. For the avoidance of doubt, following the increase in the aggregate principal amount of any outstanding Global Note as a result of a PIK Payment, such Global Note will bear interest on such increased aggregate principal amount from and after the date of such PIK Payment at the rate applicable to the Notes in the manner set forth in Section 3.07 of the Indenture.

Interest shall be payable quarterly in arrears (to the Holders of record at the close of business (if applicable) on March 15, June 15, September 15 and December 15 (whether or not a Business Day) immediately preceding the Interest Payment Date) on each Interest Payment Date, commencing September 30, 2024.

Interest on this Note will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from August 8, 2024; *provided* that, if there is no existing default in the payment of interest and if this Note is authenticated between a Regular Record Date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such Interest Payment Date. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Issuer shall pay interest on overdue principal and premium, if any, and interest on overdue installments of interest, to the extent lawful, at a rate per annum equal to the rate of interest borne by the Notes.

2. Method of Payment.

The Issuer shall pay interest (except Defaulted Interest) on the principal amount of the Notes on the last Business Day of each March, June, September and December (commencing on September 30, 2024) to the Persons who are Holders (as reflected in the Note Register at the close of business (if applicable) on the March 15, June 15, September 15 and December 15 (whether or not a Business Day) immediately preceding the Interest Payment Date), in each case, even if the Note is cancelled on registration of transfer or registration of exchange after such Regular Record Date; *provided* that, with respect to the payment of principal or premium (including the Exit Premium), the Issuer shall make payment to the Holder that surrenders this Note to the Paying Agent on or after the date such principal or premium is due and payable.

The Issuer shall pay principal (and premium, including the Exit Premium) and interest in U.S. dollars. The Issuer may pay principal and the Exit Premium on the Notes either (a) by mailing a check for such interest to a Holder's registered address (as reflected in the Note Register) or (b) subject to the provisions of the Indenture, by wire transfer to an account located in the United States maintained by the payee. If a payment date is a date other than a Business Day at a place of payment, payment may be made at that place on the next succeeding day that is a Business Day and no interest shall accrue for the intervening period. Notwithstanding anything to the contrary herein, PIK Interest shall be paid in accordance with Section 3.07 of the Indenture.

3. Paying Agent and Note Registrar.

The Issuer initially appoints U.S. Bank Trust Company, National Association, as Paying Agent and Note Registrar. The Issuer may change any Paying Agent or Note Registrar upon written notice thereto. The Issuer or any of its Subsidiaries may act as Paying Agent, Note Registrar or co-registrar.

4. Indenture.

The Issuer issued the Notes under an Indenture, dated as of August 8, 2024 (the "*Indenture*"), by and among the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent. The Issuer is also entitled to issue PIK Notes after the date hereof in accordance with the Notes and the Indenture. Capitalized terms herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall control.

The Notes are secured senior obligations of the Issuer. The Indenture does not limit the aggregate principal amount of the Notes.

5. Redemption.

Optional Redemption. The Issuer may, at its option and on one or more occasions, redeem the Notes, in whole or in part, upon notice as set forth in Section 11.05 of the Indenture, at a redemption price equal to the sum of (1) the principal amount plus (2) accrued and unpaid interest thereon, if any, to, but excluding, the (any applicable date of redemption hereunder, the "*Redemption Date*"), subject to the right of Holders of record of Notes on the relevant Regular Record Date to receive interest due on the relevant Interest Payment Date falling on or prior to the Redemption Date, plus (3) the applicable Exit Premium.

Notwithstanding anything to the contrary herein, unless the Notes are earlier redeemed pursuant to Article Eleven of the Indenture or otherwise repurchased in accordance with the Indenture, the Issuer shall promptly pay on the maturity date of the Notes in cash the applicable Exit Premium in accordance with Section 10.01 of the Indenture.

6. Repurchase upon a Change of Control and Asset Sales.

Upon the occurrence of (a) a Change of Control, the Holders shall have the right to require that the Issuer purchase such Holder's Outstanding Notes, in whole or in part, at a purchase price equal to the sum of (1) the principal amount plus (2) 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 on or prior to the Change of Control Payment Date (as defined in Section 10.16(a)(2)) plus (3) the applicable Exit Premium and (b) Asset Sales, the Issuer may be obligated to make offers to purchase Notes with a portion of the Net Proceeds of such Asset Sales at an offer price in cash in an amount equal to the sum of (1) the principal amount plus (2) accrued and unpaid interest, if any, to, but excluding, the date fixed for the closing of such offer, plus (3) the applicable Exit Premium.

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7. [Reserved].

8. Denominations; Transfer; Exchange.

The Notes are in registered form without coupons in minimum denominations of $1.00 principal amount and integral multiples of $1.00 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Note Registrar and the Issuer may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Note Registrar and the Issuer need not register the transfer or exchange of any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, an Asset Sale Offer or other tender offer. Also, the Note Registrar and the Issuer need not register the transfer or exchange of any Notes for a period of ten days before delivering a notice of redemption of Notes to be redeemed.

9. Persons Deemed Owners.

A registered Holder may be treated as the owner of a Note for all purposes.

10. Unclaimed Money.

If money for the payment of principal (premium, if any) or interest remains unclaimed for two years, the Trustee and the Paying Agent shall pay the money back to the Issuer at its written request. After that, Holders entitled to the money must look to the Issuer for payment, unless an abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

11. Discharge and Defeasance Prior to Redemption or Maturity.

If the Issuer irrevocably deposits, or causes to be deposited, with the Trustee money or Government Securities sufficient to pay the then outstanding principal of (premium, if any) and accrued but unpaid interest on the Notes to the Redemption Date or Stated Maturity, the Issuer will be discharged from its obligations under the Indenture and the Notes, except in certain circumstances for certain covenants thereof, or will be discharged from certain covenants set forth in the Indenture.

12. Amendment; Supplement; Waiver.

Subject to certain exceptions, the Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement and the Security Documents may be amended or supplemented with the consent of the Required Holders, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Notes, any Guarantee, the First Lien/Second Lien Intercreditor Agreement and the other Security Documents may be waived with the consent of the Required Holders. Without notice to or the consent of any Holder, the parties thereto may amend or supplement the Indenture, the Notes or the Guarantees to, among other things, cure any ambiguity, omission, mistake, defect or inconsistency and make any change that does not adversely affect the legal rights under the Indenture of any Holder in any material respect.

13. Restrictive Covenants.

The Indenture contains certain covenants, including covenants with respect to the following matters: (i) Restricted Payments; (ii) incurrence of Indebtedness and issuance of Disqualified Stock and Preferred Stock; (iii) Liens; (iv) transactions with Affiliates; (v) dividend and other payment restrictions affecting Restricted Subsidiaries; (vi) guarantees of Indebtedness by Restricted Subsidiaries; (vii) merger and certain transfers of assets; (viii) purchase of Notes upon a Change of Control; (ix) disposition of proceeds of Asset Sales; and (x) dispositions of Material Property. Within 120 days after the end of each fiscal year, the Issuer must report to the Trustee on compliance with such limitations.

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14. Successor Persons.

When a successor Person or other entity assumes all the obligations of its predecessor under the Notes or the Guarantees and the Indenture, the predecessor Person will be released from those obligations.

15. Remedies for Events of Default.

If an Event of Default, as defined in the Indenture, occurs and is continuing, the Trustee by notice to the Issuer or the Required Holders may declare the principal, premium (including the Exit Premium), if any, interest and any other monetary obligations on all the then Outstanding Notes to be due and payable immediately by a notice in writing to the Issuer (and to the Trustee if given by Holders). In case an Event of Default occurs and is continuing, the Trustee shall be under no obligation to exercise any rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered indemnity or security against any loss, liability or expense satisfactory to the Trustee. Subject to certain restrictions, the Required Holders are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability.

16. Guarantees.

The Issuer's obligations under the Notes are fully, irrevocably and unconditionally guaranteed on a senior secured basis, to the extent set forth in the Indenture, by each of the Guarantors.

17. Trustee Dealings with Issuer.

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may make loans to, accept deposits from, perform services for, and otherwise deal with, the Issuer and its Affiliates as if it were not the Trustee.

18. Authentication.

This Note shall not be valid until the Trustee manually signs the certificate of authentication on the other side of this Note.

19. Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/G/M/A (= Uniform Gifts to Minors Act).

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20. CUSIP or ISIN Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP or ISIN numbers to be printed on the Notes and the Trustee may use CUSIP or ISIN numbers in notices as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

21. Governing Law.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE ISSUER AGREES TO SUBMIT TO THE 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 NOTE OR THE INDENTURE.

22. Security.

The Notes and the related guarantees shall be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture, the First Lien/Second Lien Intercreditor Agreement and the Security Documents. Reference is made to the Indenture and the Security Documents for terms relating to such security, including the release, termination and discharge thereof. Enforcement of the Security Documents is subject to the First Lien/Second Lien Intercreditor Agreement and the Security Documents. The Issuer shall not be required to make any notation on this Note to reflect any grant of such security or any such release, termination or discharge.

The Issuer shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to Accelerate Diagnostics, Inc., 3950 South Country Club, Suite 470, Tucson, Arizona 85714, Attention: Jack Phillips, Chief Executive Officer; David B. Patience, Chief Financial Officer; Christopher Simon, Controller.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____
(Print or type assignee's name, address and zip code)

_____
(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Issuer.

The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Sign exactly as your name appears on the other side of this Note.

In connection with any transfer of any of the Notes evidenced by this certificate occurring prior to the date that is one year after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Issuer or any "Affiliate" of the Issuer within the meaning of the Securities Act of 1933, as amended (the "*Securities Act*"), the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

☐ to the Issuer; or

(1) ☐ pursuant to an effective registration statement under the Securities Act; or

(2) ☐ inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act; or

(3) ☐ outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.

_____
Signature

Signature Guarantee:

_____ _____
Signature must be guaranteed Signature

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

_____
Notice: To be executed by
an executive officer

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The initial principal amount of this Global Note is $_____. The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Note	Amount of increase in Principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian

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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 10.16 or Section 10.17 of the Indenture, check the box: ☐

☐ If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 10.16 or Section 10.17 of the Indenture, state the amount in principal amount: $

($1.00 or integral multiples thereof, *provided* that the unpurchased portion of a Note must be equal to at least $1.00)

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the other side of this Note)

Signature
Guarantee: _____
(Signature must be guaranteed)

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT A

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

[_____] SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, 202__, by _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of the Issuer.

W I T N E S S E T H

WHEREAS, the Issuer has heretofore executed and delivered to U.S. Bank Trust Company, National Association, a national banking association, as trustee (in such capacity, the "*Trustee*") and as notes collateral agent (in such capacity, the "*Notes Collateral Agent*"), that certain indenture, dated as of August 8, 2024 (the "*Indenture*"), providing for the issuance of Super-Priority Senior Secured PIK Notes due 2025 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee and the Notes Collateral Agent a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Guarantee*");

WHEREAS, pursuant to Section 9.01 of the Indenture, the Guaranteeing Subsidiary, the Trustee and the Notes Collateral Agent are authorized to enter into this Supplemental Indenture without the consent of the Holders of the Notes; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary, the Trustee and the Notes Collateral Agent mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Indenture including but not limited to Article Twelve thereof.

3. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Issuer or any Guaranteeing Subsidiary under the Notes, any Guarantees, the First Lien/Second Lien Intercreditor Agreement, any other Security Document, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

4. GOVERNING LAW. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO AGREE TO SUBMIT TO THE 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 SUPPLEMENTAL INDENTURE.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of the Supplemental Indenture and of

signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of the Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental 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. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to the Indenture or any document to be signed in connection with this Supplemental Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means; *provided* that, notwithstanding anything herein to the contrary, neither the Trustee nor the Notes Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Notes Collateral Agent, as applicable, pursuant to reasonable procedures approved by the Trustee or the Notes Collateral Agent, as applicable. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the Electronic Signatures in Global and National Commerce Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (e.g., www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be legally valid, effective and enforceable for all purposes.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience or reference only and are not intended to be considered a part hereof and shall not affect the construction hereof.

7. THE TRUSTEE AND NOTES COLLATERAL AGENT. Neither the Trustee nor the Notes Collateral Agent shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

[Signature pages follow.]

IN WITNESS WHEREOF, the [party][parties] hereto [has][have] caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY],

By: _____
Name:
Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee and as Notes Collateral Agent

By: _____
Name:
Title:

EXHIBIT B

INCUMBENCY CERTIFICATE

The undersigned, _____, being the _____ of Accelerate Diagnostics, Inc., a Delaware corporation (the "*Issuer*"), does hereby certify that the individuals listed below are qualified and acting officers of the Issuer as set forth in the right column opposite their respective names and the signatures appearing in the extreme right column opposite the name of each such officer is a true specimen of the genuine signature of such officer and such individuals have the authority to execute documents to be delivered to, or upon the request of, U.S. Bank Trust Company, National Association, as Trustee and as Notes Collateral Agent under the Indenture dated as of August 8, 2024, by and among the Issuer, the Guarantors party thereto and U.S. Bank Trust Company, National Association, as Trustee and as Notes Collateral Agent.

Name	Title:	Signature

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Certificate as of the ____ day of _____, 20__.

Name:
Title:

EXHIBIT C

FORM OF NET SHORT REPRESENTATION

The undersigned, _____, and U.S. Bank Trust Company, National Association, as trustee (the "*Trustee*") have heretofore executed an indenture, dated as of August 8, 2024 (as amended, supplemented or otherwise modified, the "*Indenture*"), providing for the issuance of the Issuer's Super-Priority Senior Secured PIK Notes due 2025 (the "*Notes*"). All terms used herein and not otherwise defined shall have the meaning ascribed to such term under the Indenture.

This letter constitutes a Position Representation in connection with a Noteholder Direction delivered pursuant to Section 6.02 of the Indenture, whereby the undersigned as Directing Holder, represents to each of the Issuer and the Trustee and the Notes Collateral Agent, if applicable, that [it is] [its beneficial owners are] not Net Short.

By: _____
Name:
Title:

Exhibit 10.1

EXECUTION VERSION

NOTE PURCHASE AGREEMENT

This Note Purchase Agreement (this "**Agreement**"), dated as of August 8, 2024, is made by and among Accelerate Diagnostics, Inc., a Delaware corporation (the "**Company**"), and the investors identified on Annex I attached hereto (together with their respective successors and permitted assigns, the "**Investors**").

WHEREAS, the Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Rule 4(a)(2) of the Securities Act of 1933, as amended (the "**Securities Act**");

WHEREAS, upon the terms and conditions stated in this Agreement, the Investors listed on Annex I hereto wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, 16.00% super senior secured notes due 2025 (the "**Notes**") in the initial aggregate principal amount of $15,000,000; and

WHEREAS, contemporaneously with the issuance and sale of the Notes, the parties hereto will execute and deliver (i) an Indenture for the Notes in the form attached hereto as Exhibit A (the "**Indenture**"), (ii) one or more notes representing the Notes, (iii) a Security Agreement, in the form attached hereto as Exhibit B (the "**Security Agreement**"), pursuant to which the Company and the Guarantors will grant to the Trustee (as defined in the Security Agreement), as collateral agent, for the ratable benefit of the Investors, a security interest in the Company's and such Guarantor's assets to secure the obligations under the Notes and the other Note Documents (as defined in the Indenture), and (iv) an Intercreditor Agreement, in the form attached hereto as Exhibit C (the "**Intercreditor Agreement**"), pursuant to which the trustee and collateral agent for the Company's 5.00% senior secured convertible notes due 2026 (the "**Convertible Notes**") will subordinate the security interest of the Convertible Notes to the security interest of the Notes.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties and covenants herein contained, which represent integral components of the transactions contemplated hereby and shall be fully enforceable by the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investors mutually agree as follows. Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Indenture.

ARTICLE 1

PURCHASE OF THE NOTES

1.1 Issuance of Notes. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), each Investor listed on Annex I shall severally, and not jointly, purchase from the Company, and the Company shall sell and issue to each such Investor, the Notes in the respective amounts set forth opposite each such Investor's name on Annex I in exchange for a cash payment by each Investor of the respective amounts set forth opposite each such Investor's name on Annex I (the "**Purchase Price**").

1.2 Closing. The closing (the "**Closing**") of the purchase and sale of the Notes shall take place on the third Business Day following the satisfaction or waiver of all of the conditions to closing set forth in Article 4 or at such other time as the Company and the Majority Investors may mutually agree (the date on which the Closing occurs, the "**Closing Date**"). On the Closing Date, each Investor listed on Annex I shall deliver the Purchase Price to the Company payable by wire transfer in same day funds to an account specified by the Company in writing in exchange for the aggregate principal amount of Notes listed opposite such Investor's name on Annex I . At the Closing, the Company shall deliver to the Investors the Notes contemplated by the prior sentence registered in such name or names as the Investors may designate.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Investors that, subject to exceptions contained in the SEC Reports (as defined below) filed with the U.S. Securities and Exchange Commission (the "**Commission**"), the statements contained in this Article 2 are true and correct as of the Closing Date except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such other specified date).

2.1 Corporate Power. The Company and each of its Subsidiaries has the corporate or other power and authority to execute, deliver and perform its obligations under this Agreement, the Indenture, the Notes, the Security Agreement, the Intercreditor Agreement, certain short-form patent, trademark or copyright security agreements and any other agreements contemplated or necessitated hereby to which it is a party (collectively, the "**Transaction Documents**"). The Company has the corporate power and authority to issue, sell and deliver the Notes.

2.2 Authorization.

(a) The execution and delivery by the Company of the Transaction Documents to which it is a party, the performance by the Company of its obligations thereunder, the issuance, sale and delivery of the Notes by the Company have been duly authorized by all requisite corporate action and will not (i) violate any provision of law, any order of any court or other agency of government, the Certificate of Incorporation of the Company, as amended to date (the "**Charter**"), or the By-laws of the Company, as amended to date (the "**By-laws**"), or any provision of any indenture, agreement or other instrument to which the Company or any of its Subsidiaries is a party or by which any of its properties or assets is bound, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or (iii) result in the creation or imposition of any Lien of any nature whatsoever upon any of the properties or assets of the Company or any of its Subsidiaries (other than the Liens created by the Notes Documents).

(b) The Notes have been duly authorized and, when issued and delivered pursuant to this Agreement, will have been duly executed, issued and delivered and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to (i) bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and (ii) general equity principles.

(c) Each Transaction Document (other than the Notes) has been duly authorized and, when executed and delivered pursuant to this Agreement, will have been duly executed and delivered and will constitute valid and legally binding obligations of the Company or its Subsidiaries party thereto, enforceable in accordance with their terms, subject, as to enforcement, to (i) bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and (ii) general equity principles.

2.3 [Reserved]

2.4 Private Offering; No Integration or General Solicitations.

(a) In reliance upon the agreements, representations and warranties of the Investors set forth herein, it is not necessary in connection with the offer, sale and delivery of the Notes to the Investors in the manner contemplated by the Notes and this Agreement to register the Notes under the Securities Act.

(b) Neither the Company nor any of its Subsidiaries has, directly or indirectly, offered, sold or solicited any offer to buy and neither the Company nor any of its Subsidiaries will, directly or indirectly, offer, sell or solicit any offer to buy, any security of a type or in a manner which would be integrated with the sale or exchange of the Notes and require any Notes to be registered under the Securities Act. Neither the Company nor any of its Subsidiaries, Affiliates or any person acting on its or any of their behalf (other than the Investors, as to whom the Company and its Subsidiaries makes no representation or warranty) has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) in connection with the Notes.

2.5 Capitalization.

(a) The capitalization of the Company as of the date hereof is as set forth in the SEC Reports. The issued and outstanding shares of capital stock of the Company have been validly issued, are fully paid and non-assessable and are not subject to any preemptive rights, rights of first refusal or similar rights. The description of the Common Stock attached as Exhibit 4.4 to the Company's Annual Report on Form 10-K for the year ended December 31, 2023 (the "**2023 Form 10-K**") is complete and accurate in all material respects.

(b) No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents or such rights have effectively been withdrawn. Except the Convertible Notes and the equity awards outstanding pursuant to the Company's equity incentive plans described in the SEC Reports, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or other securities or capital stock of any Subsidiary. The issuance, exchange and sale of the Notes will not obligate the Company or any Subsidiary to issue any securities to any Person (other than the Investors). Other than the Convertible Notes, there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all U.S. federal and state securities laws, and none of such outstanding shares were issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any shareholder, the Board or others is required for the issuance and sale of the Notes. There are no shareholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders, other than the note purchase agreements and note exchange agreements dated as of June 9, 2023 entered into between the Company and the holders of the Convertible Notes.

2.6 SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the three (3) years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("**GAAP**"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. The Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off balance sheet obligations), not described in the 2023 Form 10-K.

2.7 Material Changes; Undisclosed Events, Liabilities or Developments. Since December 31, 2023, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its shareholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company equity incentive plans described in the SEC Reports. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Notes, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one trading day prior to the date that this representation is made.

2.8 Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "**Action**") that is not described in the 2023 Form 10-K. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or threatened, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

2.9 Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.10 Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

2.11 Environmental Laws. The Company and the Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as

well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("**Environmental Laws**"); (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each of clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

2.12 Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("**Material Permits**"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

2.13 Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries, (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties and (iii) Liens created by the Collateral Documents (as defined in the Indenture) and other Liens permitted by the Indenture (including Liens created by the Convertible Note Documents). Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

2.14 Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could have a Material Adverse Effect (collectively, the "**Intellectual Property Rights**"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.15 Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary for companies of the Company's size and in the businesses in which the Company and the Subsidiaries are engaged. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

2.16 Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is currently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers, consultants and directors and other than warrants previously issued to employees, officers, consultants and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, shareholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including equity award agreements under any equity incentive plan of the Company.

2.17 Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof, as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the 2023 Form 10-K under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its 2023 Form 10-K the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

2.18 Accountants. The Company's accounting firm is set forth in the SEC Reports. To the knowledge and belief of the Company, such accounting firm (i) is a registered public accounting firm as required by the Exchange Act; (ii) has expressed its opinion with respect to the financial statements included in the 2023 Form 10-K; and (iii) is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act with respect to the Company.

2.19 Certain Fees. Except for the fees of Perella Weinberg Partners, no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Investors shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 2.19 that may be due in connection with the transactions contemplated by the Transaction Documents.

2.20 Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Notes, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

2.21 Certificate re: Readout. When delivered, the officer's certificate specified in Section 4.1(a) shall be accurate and complete. Upon delivery of such certificate, the Company and its Subsidiaries will be permitted to incur up to $25 million of Indebtedness (as defined in the Convertible Note Indenture) pursuant to Section 4.10 of the Convertible Note Indenture.

2.22 Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents or as will be disclosed pursuant to the Current Report on Form 8-K announcing such transactions, the Company confirms that as of the date hereof, neither it nor any other Person acting on its behalf has provided any of the Investors or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company.

2.23 Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, and after giving effect to all transactions to occur on the Closing Date, (A) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they

mature, (B) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted, including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (C) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances, after giving effect to the transactions contemplated by the Transaction Documents, which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one (1) year from the Closing Date.

2.24 Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

2.25 Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Notes, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Notes, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

2.26 Compliance with Applicable Law. The Company and the Subsidiaries: (i) are and at all times have been in material compliance with all statutes, rules and regulations applicable to the properties, business and operations of the Company, including the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured or distributed by the Company or the Subsidiaries ("**Applicable Laws**"), (ii) have not received any notice of adverse finding, warning letter, or other written correspondence or notice from any federal, state, local or foreign governmental or regulatory authority alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("**Authorizations**"), which would, individually or in the aggregate, result in a Material Adverse Effect; (iii) possess all material Authorizations and such Authorizations are valid and in full force and effect and neither the Company nor the Subsidiaries is in material violation of any term of any such Authorizations; (iv) have not received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any federal, state, local or foreign governmental or regulatory authority or third party alleging that any Company product, operation or activity is in material violation of any Applicable Laws or Authorizations and has no knowledge that any federal, state, local or foreign governmental or regulatory authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding against the Company; (v) have not received notice that any federal, state, local or foreign governmental or regulatory authority or third party that (A) it has taken, is taking or intends to take action to limit, suspend, modify or revoke any material Authorizations; contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any product of the Company or its Subsidiaries, (B) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any product of the Company or its Subsidiaries, (C) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (D) enjoins production at any facility of the Company or any of its Subsidiaries, (E) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (F) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect; (vi) have no knowledge that any federal, state, local or foreign governmental or regulatory authority or third party is considering any of the foregoing such actions contemplated by clause (v); and (vii) have filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations except where the failure to file such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments would not result in a Material Adverse Effect. All such reports, documents, forms,

notices, applications, records, claims, submissions and supplements or amendments contemplated by clause (vii) were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission). The Company has established and administers a compliance program applicable to the Company, to assist the Company and the directors, officers and employees of the Company in complying with applicable regulatory guidelines. The preclinical studies and clinical trials conducted by the Company or on behalf of the Company were, and, if still pending are, to the Company's knowledge, being conducted in all material respects in compliance with Applicable Law and in accordance with experimental protocols, procedures and controls generally used by qualified experts in the preclinical study and clinical trials of new drugs and biologics as applied to comparable products to those being developed by the Company.

2.27 Cybersecurity. (i)(x) There has been no security breach or other compromise of or relating to any of the Company's or any Subsidiary's information technology and computer systems, networks, hardware, software, data (including the data of its respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of it), equipment or technology (collectively, "**IT Systems and Data**") and (y) the Company and the Subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to its IT Systems and Data; (ii) the Company and the Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, individually or in the aggregate, have a Material Adverse Effect; (iii) the Company and the Subsidiaries have implemented and maintained commercially reasonable safeguards to maintain and protect its material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and Data; and (iv) the Company and the Subsidiaries have implemented backup and disaster recovery technology consistent with industry standards and practices.

2.28 Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation, HIPAA, CCPA, and the European Union General Data Protection Regulation (EU 2016/679) (collectively, **the "Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company has in place, complies with, and takes appropriate steps to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, processing, disclosure, handling, and analysis of Personal Data and Confidential Data (the "**Policies**"). The Company has at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

2.29 Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of applicable laws, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**").

2.30 Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's or any Subsidiary's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**").

2.31 Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "**Money Laundering Laws**"), and no Action or other proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor, severally and not jointly, represents and warrants to the Company that the statements contained in this Article 3 are true and correct with respect to such Investor as of the Closing Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such other specified date).

3.1 Such Investor is an "accredited investor" as defined by Rule 501 of Regulation D under the Securities Act and a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act, and such Investor is capable of evaluating the merits and risks of its investment in the Notes and has the ability and capacity to protect its interests. Such Investor is not, and has not in the last three months been, an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act.

3.2 Such Investor is purchasing the Notes as principal for its own account, for investment purposes and not with a view to distribution or resale in any manner that would violate the registration requirements of the Securities Act or the rules and regulations promulgated by the Commission thereunder, including Rule 144A; and such Investor acknowledges and agrees that an investment in the Notes is not a liquid investment.

3.3 Such Investor confirms that such Investor has had the opportunity to ask questions of, and receive answers from, the Company or any authorized Person acting on its behalf concerning the Company and its business and to obtain any additional information, to the extent possessed by the Company (or to the extent it could have been acquired by the Company without unreasonable effort or expense) necessary to verify the accuracy of the information received by such Investor. In connection therewith, such Investor acknowledges that such Investor has had the opportunity to discuss the Company's business, management and financial affairs with the Company's management or any authorized Person acting on its behalf.

3.4 Such Investor has all requisite legal and other power and authority to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement. This Agreement constitutes a valid and legally binding obligation of such Investor enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

3.5 Such Investor has carefully considered and has discussed with its legal, tax, accounting and financial advisors, to the extent such Investor has deemed necessary, the suitability of this investment and the transactions contemplated by this Agreement for such Investor's particular federal, state, provincial, local and foreign tax and financial situation and has independently determined that this investment and the transactions contemplated by this Agreement are a suitable investment for such Investor. Such Investor understands that it (and not the Company) shall be responsible for such Investor's own tax liability that may arise as a result of the investment in the Notes or the transactions contemplated by this Agreement.

3.6 Such Investor acknowledges that an investment in the Notes is speculative and involves a high degree of risk and that such Investor can bear the economic risk of the acceptance of the Notes. Such Investor recognizes and understands that no federal, state, provincial or foreign agency has recommended or endorsed the purchase of the Notes. Such Investor acknowledges that it has such knowledge and experience in financial and business matters that such Investor is capable of evaluating the merits and risks of an investment in the Notes and of making an informed investment decision with respect thereto.

3.7 The principal place of business of such Investor is correctly set forth below such Investor's name on the signature page hereto.

3.8 Each Investor acknowledges and agrees that it and each other Investor is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. Each Investor further acknowledges that no Investor is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Investor or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to such Investor's acquisition of the Notes. Each Investor further represents that its decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by such Investor.

ARTICLE 4

CONDITIONS RELATING TO THE CLOSING

4.1 Conditions to the Obligations of the Investors at the Closing. The several obligations of each Investor to consummate the transactions contemplated hereby on the Closing Date are subject to the satisfaction of the following conditions as of the Closing Date, unless any such conditions are waived by the Majority Investors prior to or on the Closing Date:

(a) Readout. The Company shall have delivered an officer's certificate to the holders of the Convertible Notes and the Trustee for the Convertible Notes pursuant to Section 4.10(i)(A) of the Convertible Notes Indenture certifying that the Readout (as defined in the Convertible Notes Indenture) has occurred.

(b) Transaction Documents; Other Documents. The Company and each Subsidiary and the Trustee, in each case, to the extent party to such Transaction Document, shall have delivered to the Investors an executed counterpart of each of the following Transaction Documents, in each case duly executed by an authorized representative thereof to the extent a party thereto, and otherwise in a form satisfactory to the Investors:

(i) this Agreement;

(ii) the Notes;

(iii) the Indenture;

(iv) the Security Agreement;

(v) the Intercreditor Agreement;

(vi) the Trademark Security Agreement and the Patent Security Agreement (in each case, as defined in the Security Agreement); and

(vii) any letter agreement in a form agreed upon by an Investor and the Company.

(c) Absence of Certain Changes. Since December 31, 2023, there shall not have occurred or arisen any event, change, effect, occurrence, circumstance or condition, which either individually or in the aggregate has had or could reasonably be expected to result in a Material Adverse Effect.

(d) Consents, Permits, and Waivers. The Company and its Subsidiaries shall have obtained any and all approvals, consents, permits and waivers necessary or appropriate for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents.

(e) Authorizations. All authorizations, consents, approvals or permits, if any, of any governmental authority or regulatory body that are required in connection with the lawful issuance and sale of the Notes pursuant to this Agreement shall have been duly obtained and shall be effective on and as of the Closing Date.

(f) Representations, Warranties and Covenants. The representations and warranties made by the Company and its Subsidiaries in Article 2 hereof and in the other Transaction Documents shall be true and correct on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all respects as of such earlier date. The Company shall have performed and complied in all respects with all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and no Event of Default shall have occurred or be continuing.

(g) Secretary's Certificate. The Company and each of its Subsidiaries shall have delivered to the Investors certificates of the Secretary of the Company and each Subsidiary, as applicable dated as of the Closing Date, certifying on behalf of the Company or such Subsidiary the following:

(i) Copies of all of the Company's or such Subsidiary's resolutions adopted by the Company's or such Subsidiary's board of directors or equivalent authority approving and authorizing the transactions contemplated hereby and the other Transaction Documents and, with respect to the Company, the issuance and sale of the Notes;

(ii) Attesting as to the incumbency and signature of the officers of the Company or such Subsidiary who have authority to execute this Agreement and the other Transaction Documents; and

(iii) Certifying as being complete and correct the copies attached to such certificate of (A) the certificate of incorporation, certificate of formation, or similar charter document, certified as of a recent date by the Secretary of State of the respective states of organization of the Company or such Subsidiary, as applicable, and (B) the bylaws, operating agreement or similar organizational documents of the Company or such Subsidiary.

(h) Good Standing Certificates. The Company shall have delivered to the Investors Certificates of Good Standing of the Company and each Subsidiary from the Secretary of State of their respective states of organization, dated as of a recent date.

(i) Agreement with Perella Weinberg Partners; Special Committee. The Company shall have entered into an engagement letter with Perella Weinberg Partners ("**PWP**") with respect to the exploration of financing strategies and strategic alternatives for the Company. The Board of the Company shall have established a special committee to oversee the exploration of such financing strategies and strategic alternatives (the "**Special Committee**") and the members of such committee shall consist of Mark Black, Marran Ogilvie, Hany Massarany and Wayne Burris.

(j) Opinion of Counsel to the Company. The Investors shall have received an opinion of counsel to the Company in form and substance reasonably satisfactory to the Investors.

(k) Solvency Certificate. The Company shall have delivered to the Investors a certificate of solvency, executed by a Financial Officer of the Company, in form and substance in accordance with Section 2.23.

(l) Lien Searches. The Investors shall have received UCC and other lien searches and other evidence as requested by the Investors that no Liens exist (other than as permitted by the Indenture or as will be released on the Closing Date).

(m) UCC Financing Statements. The Investors shall have received appropriately completed copies of UCC financing statements naming the Company and each Guarantor as of the Closing Date as a debtor and the Trustee as a secured party, or other similar instruments or documents to be filed under the UCC of the jurisdiction of organization of the Company or such Guarantor, as applicable.

(n) Pledged Collateral. Subject to the terms of the Indenture and the Security Agreement, the Trustee shall have received any and all certificates, notes and instruments and transfer powers evidencing Pledged Securities (as defined in the Security Agreement) pledged pursuant to the Security Agreement as of the Closing Date.

(o) No Litigation. There shall be no claim, action, suit, investigation, litigation or proceeding, pending or, to the knowledge of the Company and its Subsidiaries, threatened, in any court or before any governmental authority with respect to the Transaction Documents or any transactions contemplated thereby or hereby.

(p) DTC. The Notes shall be eligible for clearance and settlement through DTC under a Rule 144A CUSIP.

(q) Other Documents. The Company shall have delivered to the Investors such other documents and instruments relating to the transactions contemplated by this Agreement as the Investors or their counsel may reasonably request.

ARTICLE 5

AFFIRMATIVE COVENANTS

For so long as any Note remains outstanding, the Company shall comply (and shall cause each of its Subsidiaries to comply) with, each of the following affirmative covenants, unless, in any given instance, any such affirmative covenant is waived in writing in accordance with the terms of Section 7.8:

5.1 Preemptive Rights.

(a) In the event of any offering or other issuance of New Debt (as defined below) by the Company, each Investor (considered together with its Affiliates) holding at least $1,000,000 of the then current principal amount of Notes (each an "**Eligible Investor**") shall have the right to purchase or participate in a percentage of the New Debt being offered that is equal to the percentage that the then current principal amount of outstanding Notes owned by such Eligible Investor bears to the then current principal amount of outstanding Notes owned by all Eligible Investors. An Eligible Investor shall be deemed to have waived its rights under this Section 5.1 if such Investor shall have not delivered to the Company its written election to purchase such securities within thirty (30) days of receipt of the Company's notice of such offering or issuance describing the material terms thereof (such thirty (30) day period, the "**Offer Period**").

(b) If any Eligible Investor fails to exercise its purchase or participation right pursuant to this Section 5.1, then each Eligible Investor validly exercising its purchase or participation right pursuant to this Section 5.1 shall have the right to purchase or participate in its pro rata share (calculated based on the proportion that the then current principal amount of Notes owned by such participating Eligible Investor bears to the then current principal amount of Notes owned by all validly exercising Eligible Investors) of the New Debt as to which such Eligible Investor failed to exercise such right. To the extent that there remains any portion of the proposed New Debt as to which Eligible Investors have not exercised their rights pursuant to this Section 5.1, then the Company shall have the right, until the expiration of one hundred eighty (180) days commencing upon the expiration of the Offer Period, to issue such New Debt on terms no more favorable to the purchasers or participators thereof than the terms specified in the Company's notice of such offering to the Investors, after which the terms of this Section 5.1 shall again apply to the Company's offering or issuance of such New Debt.

(c) For purposes of this Agreement, the term "**New Debt**" shall mean debt securities, notes, loans or other rights or instruments (whether or not convertible into equity of the Company) that represent Indebtedness (as defined in the Indenture) of the Company or any of its Subsidiaries, including any New Debt that is debtor-in-possession financing ("**DIP Financing**").

(d) Notwithstanding anything to the contrary in this Section 5.1, for purposes of Affiliate Debt only, the percentage of the New Debt that each Eligible Investor shall be entitled to purchase pursuant to Section 5.1(a) and (b) shall be equal to (x) the percentage that the then current principal amount of the outstanding Notes owned by such Eligible Investor plus, if such Person is a Convertible Notes Eligible Investor, the then current principal amount of Convertible Notes owned by such Eligible Investor bears to (y) the then current principal amount of outstanding Notes owned by all Eligible Investors plus the then current principal amount of the

outstanding Convertible Notes owned by each holder (considered together with its Affiliates) of more than $1,000,000 of Convertible Notes ("**Convertible Notes Eligible Investors**") in the case of Section 5.1(a) or by all exercising Eligible Investors and Convertible Note Eligible Investors in the case of Section 5.1(b). For purposes of this Agreement, the term "**Affiliate Debt**" shall mean debt securities, notes, loans or other rights or instruments (whether or not convertible into equity of the Company) that represent Indebtedness (as defined in the Indenture) of the Company or any of its Subsidiaries, that is proposed to be issued to any Affiliate of the Company, including the Schuler Parties. For the avoidance of doubt, no Investor in the Notes or the Convertible Notes shall be deemed to be an Affiliate of the Company for the purposes of this Section 5.1.

5.2 Use of Proceeds. The Company will use the net proceeds from the sale of the Notes to (a) pay costs related to the transactions contemplated in the Transaction Documents and (b) fund working capital for general corporate purposes.

5.3 Disclosure. Promptly after the Closing, the Company shall file a Current Report on Form 8-K, Quarterly Report on Form 10-Q, or press release or other public disclosure disclosing (i) the consummation of the transactions contemplated by the Transaction Documents, (ii) that the Company has engaged PWP to assist it in a review of financing strategy and strategic alternatives and (iii) any information that the Company believes constitutes or might constitute material, non-public information ("**MNPI**") that has been provided to any Investor between the date of this Agreement and the Closing by or on behalf of the Company. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company.

5.4 Rollup. In the event that the Company enters into any DIP Financing provided by the Investors, the Company shall seek bankruptcy court approval for each Eligible Investor to have the right to elect to have all such Eligible Investor's Notes (calculated at the then principal amount of such Notes plus the Exit Fee attributable to such Notes) rolled into such DIP Financing in accordance with Section 10.19 of the Indenture; provided, that such DIP Rollup shall be subject to approval of the applicable bankruptcy court.

5.5 Indebtedness. Without the prior written consent of Indaba and Streeterville Capital, LLC, the Company shall not, and shall not permit any Subsidiary to, incur any Indebtedness (as defined in the Indenture) except as expressly permitted by Section 10.11 of the Indenture.

5.6 Information Rights; Confirmation of Compliance with Covenants; Observer Rights

(a) Upon written request of Indaba, the Company shall, as soon as practicable upon such request, but in any event within 15 days after the end of the applicable month, provide to Indaba select unaudited financial information, including revenue, operating expenses and cash balances as of the end of such month, all prepared in accordance with GAAP (except that such financial statements or other information provided may (to the extent applicable) (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP).

(b) At least 48 hours prior to the launch of any transaction pursuant to which the Company intends to seek to raise capital, the Company shall provide notice to Indaba of such intended transaction. The launch of a transaction shall mean the earlier of (x) the public announcement of any such transaction and (y) the first outreach to any potential investors whether on a public basis. If the Company determines not to proceed with any such transaction, the Company shall notify Indaba as soon as practicable after such decision is made. Indaba may at any time by written notice to the Company elect not to receive any notice pursuant to this Section 5.6(b).

(c) Indaba may provide any information received pursuant to this Section 5.6 to other holders of Notes upon their request, subject to such holders agreeing in writing that such information shall be subject to the provisions of Section 5.7 and Section 5.8. Upon request of Indaba, the Indaba Appointee may provide any information received in the course of his or her services as the Indaba Appointee to Indaba, subject to the provisions of Section 5.7 and Section 5.8.

(d) In the event that the Common Stock ceases to be listed or quoted on any of The New York Stock Exchange, the Nasdaq Capital Market, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors), at Indaba's request, Indaba will be entitled to appoint a person to attend all meetings of the Special Committee in a non-voting, observer capacity (an "**Observer**"). The Company will give notice of such Special Committee meetings to the Observer at the same time and in the same manner that it gives notice to Special Committee members. The Company shall provide to the Observer copies of all notices, minutes, consents and other materials that it provides to the members of the Special Committee at the same time and in the same manner as such information is delivered to the Special Committee members; provided that the Observer agrees in writing to comply with the confidentiality requirements set forth in Section 5.7; provided further, that the Company may withhold any information and exclude the Observer from any meeting or portion thereof to the extent that access to such information or attendance at such meeting (or portion thereof) (a) would reasonably be expected to adversely affect the attorney-client privilege between the Company and its counsel, (b) could create a *bona fide* conflict of interest between the Company, on the one hand, and Indaba, on the other hand, or (c) would contravene a *bona fide* Company non-disclosure obligation to a third party. Indaba may change the Observer at any time upon delivery to the Company of reasonable prior written notice signed by Investor. The Company shall allow the Observer to attend Special Committee meetings by telephone or electronic communication if desired. The Company shall be responsible for all reasonable and customary out-of-pocket expenses incurred in connection with the Observer's attendance at Special Committee meetings in the same manner and to the same extent as such expenses are reimbursed for members of the Special Committee.

5.7 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor or make decisions with respect to its investment in the Company) any confidential information obtained from the Company pursuant to Section 5.6 or Indaba pursuant to Section 5.6(c), as applicable (the "**Confidential Information**"), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 5.7 by such Investor), (b) is or has been independently developed or conceived by such Investor without use of the Company's Confidential Information, or (c) is or has been made known or disclosed to such Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose Confidential Information (i) to its attorneys, accountants, consultants, and other professionals to the extent reasonably necessary to obtain their services in connection with monitoring its investment in the Company represented by its investment in the Notes; (ii) to any prospective purchaser of any Notes from such Investor, if such prospective purchaser agrees in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 5.7 and Section 5.8; (iii) to any holder of Notes; (iv) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in accordance with such Investor's policies, procedures and practices so long as such Persons are subject to confidentiality provisions in accordance with such policies, procedures and practices and such provisions are at least as restrictive as those provided herein, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (v) as may otherwise be required by law, regulation, rule, court order or subpoena, provided that such Investor promptly notifies the Company of such disclosure and takes reasonable steps (at the Company's sole cost and expense) to minimize the extent of any such required disclosure.

5.8 Securities Laws. Indaba, and any other holder of Notes that receives any information pursuant to Section 5.6, acknowledges and agrees that (i) any information received pursuant to Section 5.6 (including, for the avoidance of doubt, information received from the Indaba Appointee) may constitute or include MNPI concerning the Company or any of its Subsidiaries, (ii) it has developed compliance procedures regarding the use of MNPI and (iii) it will handle such MNPI in compliance with all Applicable Laws, including, without limitation, United States federal and state securities laws and regulations.

5.9 Compliance With Laws, Contracts and Governing Documents. The Company and its Subsidiaries shall at all times be in compliance in all material respects with (i) the applicable laws wherever its business is located, including, without limitation, the FCPA; the PATRIOT Act, and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations; and the laws, regulations and Executive Orders and sanctions programs administered by the OFAC, including, without limitation, the Anti-Money Laundering/OFAC Laws, (ii) the provisions of its Governing Documents and (iii) all material agreements and instruments by which the Company, its Subsidiaries or any of their properties may be bound.

5.10 State Securities Laws ("Blue Sky"). The Notes are being offered and sold for investment only pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof. The Company shall, on or before the Closing Date, take such actions in order to make certain that the offer and sale of the Notes will not result in a violation of the Securities Act or of the securities laws of any state or of any other jurisdiction, and shall provide evidence of any such action (including,

without limitation, providing evidence of qualification, filings, or availability of self-executing exemptions) to the Investors on or before the Closing Date.

5.11 Notices. From the date hereof until the Closing Date:

(a) the Company will promptly (but in any event within two (2) Business Days after obtaining knowledge thereof) notify the Investors in writing of the occurrence of any facts or circumstances that would constitute an Event of Default under the Notes; and

(b) the Company shall promptly (but in any event within three (3) Business Days) disclose in writing to the Investors of any matter known to them that has resulted in a Material Adverse Change.

Notices required to be delivered pursuant to the terms of this Section 5.11 (to the extent the information to be contained in any such notices is included in materials otherwise filed with the Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Company posts such materials, or provides a link thereto, on the Company's website on the Internet at the Company's website address; provided, however, the Company shall promptly notify the Investors in writing of the posting of any such materials.

5.12 Board of Directors.

(a) Upon written request of Indaba, Indaba shall have the right to appoint a person to the Board (the "**Indaba Appointee**"), who shall be a member of the Board by, but no earlier than, March 31, 2025, unless the Board or the Company is prevented from doing so by applicable law. The person who is appointed as the Indaba Appointee shall be subject to the Company's consent (which shall not be unreasonably delayed, conditioned or withheld) provided that Indaba may continue proposing a person to be the Indaba Appointee until a person is approved by the Company as the Indaba Appointee.

(b) Upon the appointment by Indaba of the Indaba Appointee to the Board, for so long as any Notes are outstanding, unless the Board or the Company is prevented from doing so by applicable law, the Company shall take all necessary action to (i) increase the size of the Board by one to allow the appointment of the Indaba Appointee, (ii) appoint the Indaba Appointee to the Board, and (iii) include in the slate of nominees recommended by the Company for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected, the Indaba Appointee.

(c) Indaba shall have the exclusive right to (i) remove the Indaba Appointee from the Board, and the Company shall take all necessary action to cause the removal of any such nominee at the request of Indaba and (ii) designate directors for election or appointment, as applicable, to the Board to fill vacancies created by reason of death, removal or resignation of the Indaba Appointee, and the Company shall take all necessary action to nominate or cause the Board to appoint, as applicable, replacement directors designated by Indaba to fill any such vacancies as promptly as practicable after such designation, in each case of clauses (i) and (ii), unless the Board or the Company is prevented from doing so by applicable law.

(d) The Company shall take all necessary action to have the Indaba Appointee appointed to serve on each committee of the Board requested by the Indaba Appointee. For so long as the Notes are outstanding, the Special Committee shall consist only of Mark Black, Marran Ogilvie, Hany Massarany and Wayne Burris, and, if appointed pursuant to this Section 5.12, the Indaba Appointee.

(e) The Company shall reimburse the Indaba Appointee for all reasonable out-of-pocket expenses incurred in connection with the Indaba Appointee's attendance at meetings of the Board and any committees thereof, including travel, lodging and meal expenses.

(f) For so long as any Indaba Appointee serves as a director of the Company, the Company shall provide the Indaba Appointee with the same expense reimbursement, benefits, indemnity, exculpation and other arrangements provided to the other directors of the Company and the Company shall not amend, alter or repeal any right to indemnification or exculpation covering or benefiting any Indaba Appointee except as and to the extent consistent with applicable law, the Company's certificate of incorporation, bylaws and any indemnification agreements with directors (except to the extent such amendment or alteration permits the Company to provide broader indemnification or exculpation rights on a retroactive basis than permitted prior thereto).

(g) To the fullest extent permitted by applicable law, the Company, on behalf of itself and each of its subsidiaries, hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate (or analogous) or business opportunity for any Investor, any of its Affiliates, or any Indaba Appointee (collectively, "**Identified Persons**" and, individually, an "**Identified Person**") and the Company or any of its Affiliates. To the fullest extent permitted by applicable law, in the event that any Identified Person acquires knowledge of a potential transaction or other corporate (or analogous) or business opportunity which may be a corporate (or analogous) or business opportunity for itself, herself or himself and the Company or any of its Affiliates, such Identified Person shall have no duty to communicate, offer or otherwise make available such transaction or other corporate (or analogous) or business opportunity to the Company or any of its Affiliates and shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any purported fiduciary duty solely by reason of the fact that such Identified Person pursues or acquires such corporate (or analogous) or business opportunity for itself, herself or himself, or offers or directs such corporate (or analogous) or business opportunity to another Person (including any Affiliate of such Identified Person).

(h) At such time as the Notes are no longer outstanding, the Indaba Appointee shall resign from the Board, unless the Company requests such person to remain on the Board. The Indaba Appointee's compensation will vest in full upon exit from the Board.

ARTICLE 6

[RESERVED]

ARTICLE 7

MISCELLANEOUS

7.1 Definitions. As used herein, the following terms shall have the respective meanings set forth below or provided for in the section of this Agreement referred to below (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(a) "**Affiliate**" shall mean any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another Person or a Subsidiary of such other Person. A Person shall be deemed to control another Person if the controlling Person owns (on a fully diluted basis) ten percent (10%) or more of any class of voting securities of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of indebtedness or equity securities, by contract or otherwise. None of the Investors shall be deemed to be an Affiliate of the Company by virtue of ownership of Notes or Convertible Notes.

(b) "**Affiliate Transaction**" shall mean any transaction, agreement or arrangement between and among (i) the Company or any Subsidiary, on the one hand, and (ii) any Affiliate of the Company or any Subsidiary or any manager, member, shareholder, officer, director or employee of the Company, any Subsidiary or any Affiliate of the Company or any Subsidiary, on the other hand; provided, however, that Affiliate Transactions shall not include the transactions effected pursuant to any Transaction Document.

(c) "**Board**" means the Board of Directors of the Company.

(d) "**Common Equity**" of any Person means capital stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

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

(f) "**Collateral**" shall have the meaning set forth in the Indenture.

(g) "**Convertible Notes Documents**" means the Convertible Notes Indenture and the Collateral Documents (as defined in the Convertible Notes Indenture) relating to the Convertible Notes.

(h) "**Convertible Notes Indenture**" means the indenture dated as of June 9, 2023 between the Company and U.S. Bank Trust Company, National Association, as trustee, relating to the Convertible Notes.

(i) "**Financial Officer**" means a chief financial officer, chief accounting officer, treasurer, controller or assistant controller or other officer reasonable acceptable to Investors.

(j) "**Governing Documents**" shall mean (i) the certificate of incorporation, certificate of formation, or similar charter document and (ii) the bylaws, operating agreement, or similar organizational document of the Company or its Subsidiaries, as applicable, as amended to date.

(k) "**Indaba**" means Indaba Capital Management, L.P,

(l) "**knowledge**" shall mean, and shall for all purposes be construed as, the collective knowledge of the directors and officers of the Company after reasonable investigation.

(m) "**Lien**" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, priority, security interest, lien (statutory or otherwise), claim or encumbrance, or preference, priority or other security arrangement held or asserted in respect of any asset, contractual deposit arrangement, whether imposed by statute or otherwise, or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, and filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction) and any contingent or other agreement to provide any of the foregoing or any other type of preferential arrangement for the purpose, or having the effect of, protecting a creditor against loss or securing the payment or performance of any obligation.

(n) "**Majority Investors**" means the Investors purchasing at least a majority of the principal amount of the Notes as of the date of this Agreement.

(o) "**Material Adverse Effect**" shall have the meaning set forth in the Security Agreement.

(p) "**Obligations**" shall mean all debts, liabilities, obligations, covenants and duties of the Company and its Subsidiaries arising out of the Transaction Documents or otherwise with respect to or arising out of or relating to any Note, whether direct or indirect, absolute or contingent, due or to be come due, now existing or hereafter arising.

(q) "**Permitted Holder**" means (1) Jack Schuler; (2) the siblings, descendants (including adoptees), step children, step grandchildren, nieces and nephews and their respective spouses of the persons described in clause (1); (3) any trusts or private foundations created by or for the benefit of, or controlled by, any of the persons described in clauses (1) and (2) or any trusts or private foundations created for the benefit of any such trust or private foundation; (4) in the event of the incompetence or death of any of the persons described in clauses (1) and (2), such person's estate, executor, administrator, committee or other personal representative or similar fiduciary or beneficiaries, heirs, devisees or distributees, in each case, who at any particular date shall beneficially own capital interests of the Company; (5) any family investment company or similar entity created by or for the benefit of any of the persons described in clauses (1) and (2) or any other family investment company or similar entity created for the benefit of any such family investment company or similar entity or (6) any group consisting solely of persons described in clauses (1)-(5).

(r) "**Person**" shall mean an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(s) "**Preferred Stock**" means shares of the Company's Preferred Stock, par value $0.001 per share.

(t) "**Schuler Parties**" means, collectively, the Jack W. Schuler Living Trust, the Tanya Eva Schuler Trust, the Theresa Heidi Schuler Trust and the Schuler Grandchildren LLC.

(u) "**Subsidiary**" means with respect to the Company, any corporation, association or other business entity of which 50% or more of the total voting power of equity entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees or other governing body thereof is at the time owned or controlled by the Company (regardless of whether such equity is owned directly or through one or more other Subsidiaries of the Company or a combination thereof).

7.2 Expenses; Indemnification.

(a) At or promptly after the Closing, the reasonable and documented fees and expenses of one counsel for the Investors shall be paid by the Company.

(b) The Company agrees that it will pay, and will save (a) the Investors, the directors, officers, employees, trustees, agents, investment advisors, auditors, investment managers, equity holders, partners, controlling persons, financing sources, collateral managers, servicers and counsel of each Investor and their respective Affiliates (collectively, the "**Indemnitees**") harmless from, any and all liabilities, costs and expenses incurred by such Indemnitees to the extent arising from or related to any breach by the Company of any of the representations or warranties of the Company set forth herein or of any of the terms hereof or any of the other Transaction Documents and (b) Indaba Capital Fund, L.P. and Streeterville Capital, LLC and their directors, officers, employees, trustees, and agents harmless from any third party claim asserted against such persons arising from or relating to the transactions contemplated by this Agreement, provided that the Company shall not have any obligation hereunder to an indemnity to any Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgement of a court of competent jurisdiction.

7.3 Remedies. In case any one or more of the representations, warranties, covenants and/or agreements set forth in this Agreement or any other Transaction Documents shall have been breached by a party hereto or thereto, the other parties may proceed to protect and enforce their respective rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or any of the other Transaction Documents, and may exercise all remedies under the Notes. Each party hereto hereby acknowledges and agrees that the other parties hereto would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached and that remedies at law would not be adequate to compensate such other parties not in default or in breach. Accordingly, each party agrees that the other parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions of this Agreement in addition to any other remedy to which they may be entitled, at law or in equity. The parties waive any defense that a remedy at law is adequate and any requirement to post bond or provide similar security in connection with actions instituted for injunctive relief or specific performance of this Agreement.

7.4 Survival. The representations, warranties, covenants and agreements made herein shall survive any investigation made by any party hereto, the execution and delivery of this Agreement and the closing of the transactions contemplated hereby.

7.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the Company and the Investors and their respective successors and permitted assigns. The Company may not assign or transfer either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the Majority Investors. For the avoidance of doubt, any Investor

may transfer the Notes to the fullest extent permitted by Applicable Law. Indaba may assign its rights under Sections 5.6 and 5.7 to any Person acquiring the majority of the then outstanding principal amount of Notes, and references to Indaba shall thereafter be to such Person.

7.6 Entire Agreement. This Agreement and the other writings referred to herein or delivered pursuant hereto (including the other Transaction Documents) which form a part hereof contain the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous arrangements or understandings with respect thereto.

7.7 Notices.

(a) Notices Generally. All notices, requests, demands, claims, consents and other communications delivered hereunder (whether or not required to be delivered hereunder) shall be deemed to be sufficient and duly given if contained in a written instrument (i) personally delivered, (ii) sent by email, (iii) sent by nationally-recognized overnight courier guaranteeing next business day delivery or (iv) sent by first class registered or certified mail, postage prepaid, return receipt requested, in each case addressed as follows:

(i) if to the Company, to:

Accelerate Diagnostics, Inc.
3950 S. Country Club Road, Suite 470
Tucson, AZ 85714
Attention: Jack Phillips, Chief Executive Officer; David B.
Patience, Chief Financial Officer; Christopher Simon, Controller
Email: jphillips@axdx.com; dpatience@axdx.com;
csimon@axdx.com

with a copy to:

Sidley Austin LLP
2021 McKinney Ave., #2000
Dallas, TX 75201
Attention: Kristen L. Smith, Jocelyne E. Kelly
E-mail addresses: kristen.smith@sidley.com; jocelyne.kelly@sidley.com

and

(ii) if to the Investors, to the addresses set forth on the signature page hereto

with a copy to:

Gibson, Dunn & Crutcher LLP
555 Mission St., Suite 3000
San Francisco, CA 94105
Attention: Stewart McDowell
Email: smcdowell@gibsondunn.com
Fax: (415) 374-8461

or to such other address as the party to whom such notice or other communication is to be given may have furnished to each other party in writing in accordance herewith. Any such notice or communication shall be deemed to have been received (A) when delivered, if personally delivered, (B) when sent, if sent by email on a business day (or, if not sent on a business day, on the next business day after the date sent by email), (C) on the next business day after dispatch, if sent by nationally recognized, overnight courier guaranteeing next business day delivery, and (D) on the fifth (5th) business day following the date on which the piece of mail containing such communication is posted, if sent by mail.

7.8 Amendments, Modifications, Terminations and Waivers. The terms and provisions of this Agreement may not be modified, amended or terminated, nor may any of the provisions hereof be waived, temporarily or permanently, except pursuant to a written instrument executed by the Company and the Majority Investors, or in the case of Section 5.5 and Section 5.6, the Company and Indaba. The Notes, the Indenture, the Security Agreement and the Intercreditor Agreement may be modified, amended or terminated as set forth in the Indenture, the Security Agreement and the Intercreditor Agreement, respectively.

7.9 Governing Law; Waiver of Jury Trial.

(a) All questions concerning the construction, interpretation and validity of this Agreement shall be governed by and construed and enforced in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether in the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. In furtherance of the foregoing, the internal law of the State of New York will control the interpretation and construction of this Agreement, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily or necessarily apply.

(b) THE COMPANY AND EACH INVESTOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS EXCEPT TO THE EXTENT NECESSARY TO ENFORCE RIGHTS AGAINST THE COLLATERAL. THE COMPANY AND EACH INVESTOR HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. THE COMPANY AND EACH INVESTOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) THE COMPANY AND EACH INVESTOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE COMPANY AND EACH INVESTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. THE COMPANY AND EACH INVESTOR WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7.10 No Third Party Reliance. Anything contained herein to the contrary notwithstanding, the representations and warranties of the Company contained in this Agreement (a) are being given by the Company as an inducement to the Investors to enter into this Agreement and the other Transaction Documents (and the Company acknowledges that the Investors have expressly relied thereon) and (b) are solely for the benefit of the Investors. Accordingly, no third party (including, without limitation, any holder of capital stock of the Company) or anyone acting on behalf of any holder thereof other than the Investors shall be a third-party or other beneficiary of such representations and warranties and no such third party shall have any rights of contribution against the Investors or the Company with respect to such representations or warranties or any matter subject to or resulting in indemnification under this Agreement or otherwise.

7.11 Publicity. Neither the Investors nor the Company shall issue any press release or make any public disclosure regarding the transactions contemplated hereby, including pursuant to Section 2.22 and Section 5.3, unless such press release or public disclosure is approved by the Majority Investors and the Company (such approvals not to be unreasonably withheld or delayed) in advance. Notwithstanding the foregoing, the parties hereto may, in documents required to be filed by it with the Commission or other regulatory bodies, make such statements with respect to the transactions contemplated hereby as each may be advised by counsel is legally necessary or advisable.

7.12 Severability. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the law and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, in the event that any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as to not be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7.13 Independence of Agreements, Covenants, Representations and Warranties. All agreements and covenants hereunder shall be given independent effect so that if a certain action or condition constitutes a default under a certain agreement or covenant, the fact that such action or condition is permitted by another agreement or covenant shall not affect the occurrence of such default, unless expressly permitted under an exception to such covenant. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of or a breach of a representation and warranty hereunder. The annexes, exhibits and schedules attached hereto are hereby made part of this Agreement in all respects.

7.14 Construction. The Company and the Investors acknowledge that the Company and its independent counsel and the Investors and their independent counsel have jointly reviewed and drafted this document, and agree that any rule of construction and interpretation to the effect that drafting ambiguities are to be resolved against the drafting party shall not be employed.

7.15 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Counterpart signatures to this Agreement delivered by facsimile or other electronic transmission shall be acceptable and binding.

7.16 Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.17 Specific Performance. The Company acknowledges and agrees that a breach of any of the terms contained in this Agreement will cause irreparable injury to the Investors and that the Investors have no adequate remedy at law in respect of such breaches and therefore agrees that the obligations of the Company contained in this Agreement shall be specifically enforceable against the Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Note Purchase Agreement as of the date first above written above.

COMPANY:

Accelerate Diagnostics, Inc.

By: /s/ Jack Phillips
Name: Jack Phillips
Title: Chief Executive Officer

Signature Page to Note Purchase Agreement

IN WITNESS WHEREOF, each of the undersigned has duly executed this Note Purchase Agreement as of the date first above written above.

INVESTOR:
Indaba Capital Fund, L.P.

By: /s/ Derek Schrier
Name: Derek Schrier
Title: CIO and Partner

Address for Notice:
1 Letterman Drive, Building D, Suite DM700
San Francisco, CA, USA, 94129
Email: derek@indabacapital.com;

Signature Page to Note Purchase Agreement

IN WITNESS WHEREOF, each of the undersigned has duly executed this Note Purchase Agreement as of the date first above written above.

INVESTOR:
Streeterville Capital, LLC

By: /s/ John M. Fife
Name: John M. Fife
Title: President

Address for Notice:
303 East Wacker Drive, Suite 1040
Chicago, IL, USA 60601
Emails: jfife@chicagoventure.com;
cstalcup@chicagoventure.com

Signature Page to Note Purchase Agreement

Annex I

Investors

Investor	Initial Principal Amount of Note	Purchase Price
Indaba Capital Fund, L.P.	$11,500,000	$11,500,000
Streeterville Capital, LLC	$3,500,000	$3,500,000

Exhibit 10.2

Execution Version

FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT

among

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Senior Priority Representative for the Super-Priority Secured Parties and Super-Priority Collateral Agent,

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Second Priority Representative for the Initial Second Priority Debt Secured Parties and Second Priority Collateral Agent,

and

each additional Representative from time to time party hereto,

and acknowledged and agreed to by

ACCELERATE DIAGNOSTICS, INC.,
as the Issuer,

and

certain Subsidiaries of the Issuer from time to time party hereto,

dated as of August 8, 2024

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FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT dated as of August 8, 2024 (as amended, restated, supplemented or modified from time to time, this "Agreement"), among U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Super-Priority Secured Parties (in such capacity and together with its successors in such capacity, the "Super-Priority Collateral Agent"), U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Initial Second Priority Debt Secured Parties (in such capacity and together with its successors in such capacity, the "Initial Second Lien Representative"), and each additional Senior Priority Representative and Second Priority Representative that from time to time becomes a party hereto pursuant to Section 8.09 and acknowledged and agreed to by ACCELERATE DIAGNOSTICS, INC., a Delaware corporation (the "Issuer"), and the other Grantors from time to time party hereto.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Super-Priority Collateral Agent (for itself and on behalf of the Super-Priority Notes Secured Parties), the Initial Second Lien Representative (for itself and on behalf of the Initial Second Priority Debt Secured Parties) and each additional Senior Priority Representative (for itself and on behalf of the Additional Senior Secured Parties under the applicable Additional Senior Priority Debt Facility) and each additional Second Priority Representative (for itself and on behalf of the Additional Second Priority Secured Parties under the applicable Additional Second Priority Debt Facility) agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Super-Priority Notes Indenture or, if defined in the UCC, the meanings specified therein. As used in this Agreement, the following terms have the meanings specified below:

"Additional Second Priority Debt" means any Indebtedness that is incurred, issued or guaranteed by the Issuer and/or any Guarantor (other than Indebtedness constituting Initial Second Lien Debt Obligations) which Indebtedness and Guarantees are secured by Liens on the Second Priority Collateral (or a portion thereof) having the same priority (but without regard to control of remedies, other than as provided by the terms of the applicable Second Priority Debt Documents) as the Liens securing the Initial Second Lien Debt Obligations; provided, however, that (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each Senior Priority Debt Document and Second Priority Debt Document in effect at the time of such incurrence and (ii) the Representative for the holders of such Indebtedness shall have become party to (A) this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.09 hereof and (B) the Second Lien Intercreditor Agreement pursuant to, and by satisfying the conditions set forth therein; provided, further, that, if such Indebtedness will be the initial Additional Second Priority Debt incurred or issued by the Issuer after the Closing Date, then the Issuer, the Initial Second Lien Representative and the Representative for the holders of such Indebtedness shall have executed and delivered the Second Lien Intercreditor Agreement. Additional Second Priority Debt shall include any Registered Equivalent Notes and Guarantees thereof by the Guarantors issued in exchange therefor.

"Additional Second Priority Debt Documents" means, with respect to any series, issue or class of Additional Second Priority Debt, the promissory notes, credit agreements, loan agreements, note purchase agreements, indentures or other operative

agreements evidencing or governing such Indebtedness or the Liens securing such Indebtedness, including the Second Priority Collateral Documents.

"Additional Second Priority Debt Facility" means each credit agreement, loan agreement, note purchase agreement, indenture or other governing agreement with respect to any Additional Second Priority Debt.

"Additional Second Priority Debt Obligations" means, with respect to any series, issue or class of Additional Second Priority Debt, (a) all principal of, and premium and interest, fees, and expenses (including, without limitation, any interest, fees, or expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding or which would accrue but for the operation of Bankruptcy Laws, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Additional Second Priority Debt, (b) all other amounts payable to the related Additional Second Priority Secured Parties under the related Additional Second Priority Debt Documents and (c) any renewals or extensions of the foregoing.

"Additional Second Priority Secured Parties" means, with respect to any series, issue or class of Additional Second Priority Debt, the holders of such Indebtedness or any other Additional Second Priority Debt Obligation, the Representative with respect thereto, any trustee or agent therefor under any related Additional Second Priority Debt Documents and the beneficiaries of each indemnification obligation undertaken by the Issuer or any Guarantor under any related Additional Second Priority Debt Documents.

"Additional Senior Priority Debt" means any Indebtedness that is incurred, issued or guaranteed by the Issuer and/or any Guarantor (other than Indebtedness constituting Super-Priority Notes Obligations) which Indebtedness and Guarantees are secured by Liens on the Senior Priority Collateral (or a portion thereof) having the same priority (but without regard to control of remedies) as the Liens securing the Super-Priority Notes Obligations; provided, however, that (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each Senior Priority Debt Document and Second Priority Debt Document in effect at the time of such incurrence and (ii) the Representative for the holders of such Indebtedness shall have become party to this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.09 hereof; provided, further, that, if such Indebtedness will be the initial Additional Senior Priority Debt incurred or issued by the Issuer after the Closing Date, then the Issuer, the Super-Priority Collateral Agent and the Representative for such Indebtedness shall have executed and delivered the Equal Priority Intercreditor Agreement. Additional Senior Priority Debt shall include any Registered Equivalent Notes and Guarantees thereof by the Guarantors issued in exchange therefor.

"Additional Senior Priority Debt Documents" means, with respect to any series, issue or class of Additional Senior Priority Debt, the promissory notes, credit agreements, loan agreements, note purchase agreements, indentures, or other operative agreements evidencing or governing such Indebtedness or the Liens securing such Indebtedness, including the Senior Priority Collateral Documents.

"Additional Senior Priority Debt Facility" means each credit agreement, loan agreement, note purchase agreement, indenture or other governing agreement with respect to any Additional Senior Priority Debt.

"Additional Senior Priority Debt Obligations" means, with respect to any series, issue or class of Additional Senior Priority Debt, (a) all principal of, and premium and interest, fees, and expenses (including, without limitation, any interest, fees, or expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding or which would accrue but for the operation of Bankruptcy Laws, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Additional Senior Priority Debt, (b) all other amounts payable to the related Additional Senior Secured Parties under the related Additional Senior Priority Debt Documents and (c) any renewals or extensions of the foregoing.

"Additional Senior Secured Parties" means, with respect to any series, issue or class of Additional Senior Priority Debt, the holders of such Indebtedness or any other Additional Senior Priority Debt Obligation, the Representative with respect thereto, any trustee or agent therefor under any related Additional Senior Priority Debt Documents and the beneficiaries of each indemnification obligation undertaken by the Issuer or any Guarantor under any related Additional Senior Priority Debt Documents.

"Agreement" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Bankruptcy Laws" means each of the Bankruptcy Code, any similar federal, state or foreign laws, rules or regulations for the relief of debtors or any reorganization, insolvency, moratorium or assignment for the benefit of creditors or any other marshalling of the assets and liabilities of any Person and any similar debtor relief laws relating to or affecting the enforcement of creditors' rights generally.

"Class Debt" has the meaning assigned to such term in Section 8.09(a).

"Class Debt Parties" has the meaning assigned to such term in Section 8.09(a).

"Class Debt Representatives" has the meaning assigned to such term in Section 8.09(a).

"Closing Date" means the date hereof.

"Collateral" means the Senior Priority Collateral and the Second Priority Collateral.

"Collateral Documents" means the Senior Priority Collateral Documents and the Second Priority Collateral Documents.

"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.

"Debt Facility" means any Senior Priority Debt Facility and any Second Priority Debt Facility.

"Designated Second Priority Representative" means (i) the Initial Second Lien Representative, so long as the Second Priority Debt Facility under the Initial Second Lien Debt Documents is the only Second Priority Debt Facility under this Agreement and (ii) at any time when clause (i) does not apply, the "Applicable Authorized Representative" or similar term (as defined in the Second Lien Intercreditor Agreement) at such time.

"Designated Senior Representative" means (i) the Super-Priority Collateral Agent, so long as the Senior Priority Debt Facility under the Super-Priority Notes Indenture is the only Senior Priority Debt Facility under this Agreement and (ii) at any time when clause (i) does not apply, the "Applicable Collateral Agent" or similar term (as defined in the Equal Priority Intercreditor Agreement) at such time.

"DIP Financing" has the meaning assigned to such term in Section 6.01.

"Discharge of Super-Priority Notes Obligations" means, except to the extent otherwise expressly provided in Section 5.06 and Section 6.04,

(a) payment in full in cash and/or in such other form of consideration as may be agreed to by the Super-Priority Notes Secured Parties of all Super-Priority Notes Obligations (other than (i) any indemnification obligations for which no claim has been asserted, (ii) any Super-Priority Notes Obligations not then due, including obligations and liabilities under any secured interest rate protection agreements and secured treasury services agreements, in each case, or similar agreements, not then due, and (iii) any other Super-Priority Notes Obligations not required to be paid in full in order to have the Liens on all Collateral securing such Super-Priority Notes Obligations to be released at such time in accordance with the applicable Super-Priority Notes Documents); and

(b) termination or expiration of all commitments, if any, to extend credit that would constitute Super-Priority Notes Obligations.

"Discharge of Senior Obligations" means, except to the extent otherwise expressly provided in Section 5.06 and Section 6.04, the occurrence of both (I) with respect to the Super-Priority Notes Obligations, the Discharge of Super-Priority Notes Obligations, and (II) with respect to all other Senior Obligations:

(a) payment in full in cash and/or in such other form of consideration as may be agreed to by the Senior Priority Secured Parties of all Senior Obligations (other than (i) any indemnification obligations for which no claim has been asserted, (ii) any Senior Other Obligations not then due (or, to the extent then due, collateralized or backstopped, as applicable, on terms reasonably satisfactory to the applicable lender or counterparty) and (iii) any other Senior Obligations not required to be paid in full in order to have the Liens on all Collateral securing such Senior Obligations to be released at such time in accordance with the applicable Senior Priority Debt Documents); and

(b) termination or expiration of all commitments, if any, to extend credit that would constitute Senior Obligations.

"Disposition" means any conveyance, sale, lease, assignment, transfer, license or other disposition.

"Equal Priority Intercreditor Agreement" means a customary intercreditor agreement in form and substance reasonably acceptable to the Senior Priority Representative with respect to each Senior Priority Debt Facility in existence at the time such intercreditor agreement is entered into and the Issuer, and which provides that the Liens on the applicable shared Collateral securing all Indebtedness covered thereby shall be of equal priority (but without regard to the control of remedies).

"Equity Interests" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"Grantors" means the Issuer and each Subsidiary of the Issuer that has granted a security interest pursuant to any Collateral Document to secure any Secured Obligations.

"Guarantors" means the "Guarantors" as defined in the Super-Priority Notes Indenture.

"Initial Second Lien Debt Agreement" means that certain Indenture, dated as of June 9, 2023, among the Issuer and U.S. Bank Trust Company, National Association, as trustee and notes collateral agent.

"Initial Second Lien Debt Documents" means the Initial Second Lien Debt Agreement and the other "Notes Documents" as defined in the Initial Second Lien Debt Agreement.

"Initial Second Lien Debt Obligations" means the "Obligations" as defined in the Initial Second Lien Debt Agreement.

"Initial Second Lien Representative" has the meaning assigned to such term in the introductory paragraph of this Agreement and shall include any successor collateral agent as provided in Article 7 of the Initial Second Lien Debt Agreement.

"Initial Second Priority Debt Secured Parties" means the "Secured Parties" as defined in the Initial Second Lien Debt Agreement.

"Insolvency or Liquidation Proceeding" means:

(a) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other applicable Bankruptcy Law with respect to any Grantor;

(b) any other voluntary or involuntary insolvency, reorganization, winding-up or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets (other than any merger or consolidation, liquidation, windup or dissolution not involving bankruptcy

(other than bankruptcy of any Immaterial Subsidiary) that is expressly permitted pursuant to, or does not otherwise constitute a default or event of default under, the terms of the Super-Priority Notes Indenture and the Second Priority Debt Documents);

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy (other than any merger or consolidation, liquidation, windup or dissolution not involving bankruptcy (other than bankruptcy of any Immaterial Subsidiary) that is expressly permitted pursuant to, or does not otherwise constitute a default or event of default under, the Super-Priority Notes Indenture and the Second Priority Debt Documents);

(d) any case or proceeding seeking arrangement, adjustment, protection, relief or composition of any debt or other property of any Grantor;

(e) any case or proceeding seeking the entry of an order of relief or the appointment of a custodian, receiver, trustee or other similar proceeding with respect to any Grantor or any property or Indebtedness of any Grantor; or

(f) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

"Joinder Agreement" means a supplement to this Agreement in the form of Annex I or Annex II hereof required to be delivered by a Representative to the Designated Senior Representative or Designated Second Priority Representative, as the case may be, pursuant to Section 8.09 hereof in order to include an additional Debt Facility hereunder and to become the Representative hereunder for the Senior Priority Secured Parties or Second Priority Secured Parties, as the case may be, under such Debt Facility.

"Officer's Certificate" has the meaning assigned to such term in Section 8.08.

"Pledged or Controlled Collateral" has the meaning assigned to such term in Section 5.05(a).

"Proceeds" means the proceeds of any sale, collection or other liquidation of Shared Collateral and any payment or distribution made in respect of Shared Collateral in an Insolvency or Liquidation Proceeding and any amounts received by any Senior Priority Representative or any Senior Priority Secured Party from a Second Priority Secured Party in respect of Shared Collateral pursuant to this Agreement and shall include all "proceeds," as such term is defined in the UCC.

"Purchase Event" has the meaning assigned to such term in Section 5.07.

"Recovery" has the meaning assigned to such term in Section 6.04.

"Refinance" means, in respect of any indebtedness, to refinance, extend, renew, defease, amend, increase, modify, supplement, restructure, refund, replace or repay, or to issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness (in whole or in part), including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated and including, in each case, through any credit agreement, loan agreement, note purchase agreement, indenture or other agreement. "Refinanced" and "Refinancing" have correlative meanings.

"Registered Equivalent Notes" means, with respect to any notes originally issued in a Rule 144A 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.

"Representatives" means the Senior Priority Representatives and the Second Priority Representatives.

"SEC" means the United States Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Lien Intercreditor Agreement" means a customary intercreditor agreement in form and substance reasonably acceptable to the Second Priority Representative with respect to each Second Priority Debt Facility in existence at the time such

intercreditor agreement is entered into and the Issuer, and which provides that the Liens on the applicable shared Collateral securing all Indebtedness covered thereby shall be of equal priority (but without regard to the control of remedies).

"Second Priority Class Debt" has the meaning assigned to such term in Section 8.09(a).

"Second Priority Class Debt Parties" has the meaning assigned to such term in Section 8.09(a).

"Second Priority Class Debt Representative" has the meaning assigned to such term in Section 8.09(a).

"Second Priority Collateral" means any "Collateral" (or equivalent term) as defined in any Initial Second Lien Debt Documents or any other Second Priority Debt Document or any other assets of the Issuer or any other Grantor with respect to which a Lien is granted or purported to be granted pursuant to a Second Priority Collateral Document as security for any Second Priority Debt Obligations.

"Second Priority Collateral Documents" means the "Collateral Documents" as defined in the Initial Second Lien Debt Agreement and each of the security agreements and other instruments and documents executed and delivered by the Issuer or any other Grantor for purposes of providing collateral security for any Second Priority Debt Obligation.

"Second Priority Debt Documents" means (a) the Initial Second Lien Debt Documents and (b) any Additional Second Priority Debt Documents.

"Second Priority Debt Facilities" means the Initial Second Lien Debt Agreement and any Additional Second Priority Debt Facilities.

"Second Priority Debt Obligations" means the Initial Second Lien Debt Obligations and any Additional Second Priority Debt Obligations.

"Second Priority Enforcement Date" means, with respect to any Second Priority Representative, the date which is 180 days (through which 180-day period such Second Priority Representative was the Designated Second Priority Representative) after the occurrence of both (i) an Event of Default (under and as defined in the Second Priority Debt Document for which such Second Priority Representative has been named as Representative) and (ii) the Designated Senior Representative's and each other Representative's receipt of written notice from such Second Priority Representative that (x) such Second Priority Representative is the Designated Second Priority Representative and that an Event of Default (under and as defined in the Second Priority Debt Document for which such Second Priority Representative has been named as Representative) has occurred and is continuing and (y) the Second Priority Debt Obligations of the series, issue or class with respect to which such Second Priority Representative is the Second Priority Representative are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the applicable Second Priority Debt Document; provided that the Second Priority Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred (1) at any time a Senior Priority Representative has commenced and is diligently pursuing any enforcement action with respect to a material portion of any Shared Collateral, or (2) at any time any Grantor which has granted a security interest in any Shared Collateral is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding.

"Second Priority Lien" means the Liens on the Second Priority Collateral in favor of Second Priority Secured Parties under the Second Priority Collateral Documents.

"Second Priority Representative" means (i) in the case of any Initial Second Lien Debt Obligations or the Initial Second Priority Debt Secured Parties, the Initial Second Lien Representative and (ii) in the case of any Additional Second Priority Debt Facility and the Additional Second Priority Secured Parties thereunder, the trustee, administrative agent, collateral agent, security agent or similar agent under such Additional Second Priority Debt Facility that is named as the Representative in respect of such Additional Second Priority Debt Facility in the applicable Joinder Agreement.

"Second Priority Secured Parties" means the Initial Second Priority Debt Secured Parties and any Additional Second Priority Secured Parties.

"Secured Obligations" means the Senior Obligations and the Second Priority Debt Obligations.

"Secured Parties" means the Senior Priority Secured Parties and the Second Priority Secured Parties.

"Senior Lien" means the Liens on the Senior Priority Collateral in favor of the Senior Priority Secured Parties under the Senior Priority Collateral Documents.

"Senior Obligations" means the Super-Priority Notes Obligations and any Additional Senior Priority Debt Obligations.

"Senior Other Obligations" means bank product, cash management and hedging obligations constituting Obligations owing under any secured interest rate protection agreement or treasury services agreement, or similar agreement.

"Senior Priority Class Debt" has the meaning assigned to such term in Section 8.09(a).

"Senior Priority Class Debt Parties" has the meaning assigned to such term in Section 8.09(a).

"Senior Priority Class Debt Representative" has the meaning assigned to such term in Section 8.09(a).

"Senior Priority Collateral" means any "Collateral" (or equivalent term) as defined in any Super-Priority Notes Document or any other Senior Priority Debt Document or any other assets of the Issuer or any other Grantor with respect to which a Lien is granted or purported to be granted pursuant to a Senior Priority Collateral Document as security for any Senior Obligations.

"Senior Priority Collateral Documents" means the "Security Documents" as defined in the Super-Priority Notes Indenture and each of the security agreements and other instruments and documents executed and delivered by the Issuer or any other Grantor for purposes of providing collateral security for any Senior Obligation.

"Senior Priority Debt Documents" means (a) the Super-Priority Notes Documents and (b) any Additional Senior Priority Debt Documents.

"Senior Priority Debt Facilities" means the Super-Priority Notes Indenture and any Additional Senior Priority Debt Facilities.

"Senior Priority Representative" means (i) in the case of any Super-Priority Notes Obligations or the Super-Priority Notes Secured Parties, the Super-Priority Collateral Agent and (ii) in the case of any Additional Senior Priority Debt Facility and the Additional Senior Secured Parties thereunder, the trustee, administrative agent, collateral agent, security agent or similar agent under such Additional Senior Priority Debt Facility that is named as the Representative in respect of such Additional Senior Priority Debt Facility in the applicable Joinder Agreement.

"Senior Priority Secured Parties" means the Super-Priority Notes Secured Parties and any Additional Senior Secured Parties.

"Super-Priority Collateral Agent" has the meaning assigned to such term in the introductory paragraph of this Agreement and shall include any successor collateral agent as provided in Section 14.08 of the Super-Priority Notes Indenture.

"Super-Priority Notes Indenture" means that certain Indenture, dated as of August 8, 2024, among the Issuer and U.S. Bank Trust Company, National Association, as trustee and notes collateral agent.

"Super-Priority Notes Documents" means the Super-Priority Notes Indenture and the other "Note Documents" as defined in the Super-Priority Notes Indenture.

"Super-Priority Notes Obligations" means the "Notes Obligations" as defined in the Super-Priority Notes Indenture.

"Super-Priority Notes Secured Parties" means the "Notes Secured Parties" as defined in the Super-Priority Notes Indenture.

"Shared Collateral" means, at any time, Collateral in which the holders of Senior Obligations under at least one Senior Priority Debt Facility (or their Representatives) and the holders of Second Priority Debt Obligations under at least one Second Priority Debt Facility (or their Representatives) hold a security interest at such time (or, in the case of the Senior Priority Debt Facilities, are deemed pursuant to Article 2 to hold a security interest). If, at any time, any portion of the Senior Priority Collateral under one or more Senior Priority Debt Facilities does not constitute Second Priority Collateral under one or more Second Priority Debt Facilities, then such portion of such Senior Priority Collateral shall constitute Shared Collateral only with respect to the Second Priority Debt Facilities for which it constitutes Second Priority Collateral and shall not constitute Shared Collateral for any Second Priority Debt Facility which does not have a security interest in such Collateral at such time.

"Uniform Commercial Code" or "UCC" means, unless otherwise specified, the Uniform Commercial Code as from time to time in effect in the State of New York.

Section 1.02. Terms Generally. The rules of interpretation set forth in Sections 1.01, 1.03 and 1.04, as applicable, of the Super-Priority Notes Indenture are incorporated herein *mutatis mutandis*.

ARTICLE II

PRIORITIES AND AGREEMENTS WITH RESPECT TO SHARED COLLATERAL

Section 2.01. Subordination. Notwithstanding the date, time, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection of any Liens granted to any Second Priority Representative or any Second Priority Secured Parties on the Shared Collateral or of any Liens granted to any Senior Priority Representative or any other Senior Priority Secured Party on the Shared Collateral (or any actual or alleged defect in any of the foregoing) and notwithstanding any provision of the UCC, any applicable Law, any Second Priority Debt Document or any Senior Priority Debt Document or any other circumstance whatsoever, each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, hereby agrees that (a) any Lien on the Shared Collateral securing or purporting to secure any Senior Obligations now or hereafter held by or on behalf of any Senior Priority Representative or any other Senior Priority Secured Party or other agent or trustee therefor, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the Shared Collateral securing or purporting to secure any Second Priority Debt Obligations and (b) any Lien on the Shared Collateral securing or purporting to secure any Second Priority Debt Obligations now or hereafter held by or on behalf of any Second Priority Representative, any Second Priority Secured Parties or any other agent or trustee therefor, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Shared Collateral securing or purporting to secure any Senior Obligations. All Liens on the Shared Collateral securing or purporting to secure any Senior Obligations shall be and remain senior in all respects and prior to all Liens on the Shared Collateral securing or purporting to secure any Second Priority Debt Obligations for all purposes, whether or not such Liens securing or purporting to secure any Senior Obligations are subordinated to any Lien securing any other obligation of the Issuer, any Grantor or any other Person or otherwise subordinated, voided, avoided, invalidated or lapsed.

Section 2.02. Nature of Senior Lender Claims. Each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, acknowledges that (a) a portion of the Senior Obligations may be revolving in nature and that the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (b) the terms of the Senior Priority Debt Documents and the Senior Obligations may be amended, restated, amended and restated, supplemented or otherwise modified, and the Senior Obligations, or a portion thereof, may be Refinanced from time to time and (c) the aggregate amount of the Senior Obligations may be increased, in each case, without notice to or consent by the Second Priority Representatives or the Second Priority Secured Parties and without affecting the provisions hereof, except as otherwise

expressly set forth herein. The Lien priorities provided for in Section 2.01 shall not be altered or otherwise affected by any amendment, restatement, amendment and restatement, supplement or other modification, or any Refinancing, of either the Senior Obligations or the Second Priority Debt Obligations, or any portion thereof. As between the Issuer and the other Grantors and the Second Priority Secured Parties, the foregoing provisions will not limit or otherwise affect the obligations of the Issuer or any other Grantor contained in any Second Priority Debt Document with respect to the incurrence of additional Senior Obligations.

Section 2.03. Prohibition on Contesting Liens. (a) Each of the Second Priority Representatives, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, extent, perfection, priority or enforceability of any Lien securing any Senior Obligations held (or purported to be held) by or on behalf of any Senior Priority Representative or any of the other Senior Priority Secured Parties or any other agent or trustee therefor in any Senior Priority Collateral or the allowability of any claims asserted with respect to any Senior Obligations in any proceeding (including any Insolvency or Liquidation Proceeding) and (b) each Senior Priority Representative, for itself and on behalf of each Senior Priority Secured Party under its Senior Priority Debt Facility, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, extent, perfection, priority or enforceability of any Lien securing any Second Priority Debt Obligations held (or purported to be held) by or on behalf of any Second Priority Representative or any of the Second Priority Secured Parties in the Second Priority Collateral or the allowability of any claims asserted with respect to any Second Priority Debt Obligations in any proceeding (including any Insolvency or Liquidation Proceeding). Notwithstanding the foregoing, no provision in this Agreement shall be construed to prevent or impair the rights of any Senior Priority Representative to enforce this Agreement (including the priority of the Liens securing the Senior Obligations as provided in Section 2.01) or any of the Senior Priority Debt Documents.

Section 2.04. No New Liens. The parties hereto agree that, so long as the Discharge of Senior Obligations has not occurred, (a) none of the Grantors shall grant any additional Liens on any asset or property of any Grantor to secure any Second Priority Debt Obligation unless it has also granted, or concurrently therewith also grants, a Lien on such asset or property of such Grantor to secure the Senior Obligations; and (b) if any Second Priority Representative or any Second Priority Secured Party shall hold any Lien on any assets or property of any Grantor securing any Second Priority Debt Obligations that are not also subject to the Liens securing all Senior Obligations under the Senior Priority Collateral Documents, such Second Priority Representative or Second Priority Secured Party (i) shall notify the Designated Senior Representative promptly upon becoming aware thereof and, unless such Grantor shall promptly also grant a similar Lien on such assets or property to each Senior Priority Representative as security for the Senior Obligations, shall assign such Lien to the Designated Senior Representative as security for all Senior Obligations for the benefit of the Senior Priority Secured Parties (but may retain a junior Lien on such assets or property subject to the terms hereof) and (ii) until such assignment or such grant of a similar Lien to each Senior Priority Representative, shall be deemed to also hold and have held such Lien for the benefit of each Senior Priority Representative and the other Senior Priority Secured Parties as security for the Senior Obligations; provided that this provision will not be violated with respect to any particular series of Additional Senior Priority Debt Obligations if the applicable trustee, administrative agent, collateral agent, security agent or similar agent under such Additional Senior Priority Debt Facility that is named as the Representative in respect of such Additional Senior Priority Debt Facility in the applicable Joinder Agreement is given a reasonable opportunity to accept a Lien on any asset or property and either the Issuer or such trustee or agent states in writing that the Senior Priority Debt Documents in respect thereof prohibit such trustee or agent from accepting a Lien on such asset or property or such trustee or agent otherwise expressly declines to accept a Lien on such asset or property. To the extent that the provisions of the immediately preceding sentence are not complied with for any reason, without limiting any other right or remedy available to any Senior Priority Representative or any other Senior Priority Secured Party, each Second Priority Representative agrees, for itself and on behalf of the other Second Priority Secured Parties for which it has been named the Representative, that any amounts received by or distributed to any Second Priority Secured Party pursuant to or as a result of any Lien granted in contravention of this Section 2.04 shall be subject to Section 4.01 and Section 4.02.

Section 2.05. Perfection of Liens. Except for the limited agreements of the Senior Priority Representatives pursuant to Section 5.05 hereof, none of the Senior Priority Representatives or the Senior Priority Secured Parties shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Shared Collateral for the benefit of the Second Priority Representatives or the Second Priority Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Senior Priority Secured Parties and the Second Priority Secured Parties and shall not impose on the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives, the Second Priority Secured Parties or any agent or trustee

therefor any obligations in respect of the disposition of Proceeds of any Shared Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or Governmental Authority or any applicable Law.

ARTICLE III

ENFORCEMENT

Section 3.01. Exercise of Remedies.

(a) So long as the Discharge of Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Issuer or any other Grantor, (i) neither any Second Priority Representative nor any Second Priority Secured Party will (x) exercise or seek to exercise any rights or remedies with respect to any Shared Collateral in respect of any Second Priority Debt Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) contest, protest or object to any foreclosure proceeding or other action brought with respect to the Shared Collateral or any other Senior Priority Collateral by any Senior Priority Representative or any Senior Priority Secured Party in respect of the Senior Obligations, the exercise of any right by any Senior Priority Representative or any Senior Priority Secured Party (or any agent or sub-agent on their behalf) in respect of the Senior Obligations under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any Senior Priority Representative or any Senior Priority Secured Party either is a party or may have rights as a third party beneficiary, or any other exercise by any such party of any rights and remedies relating to the Shared Collateral under the Senior Priority Debt Documents or otherwise in respect of the Senior Priority Collateral or the Senior Obligations, or (z) object to the forbearance by the Senior Priority Secured Parties from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Shared Collateral in respect of Senior Obligations and (ii) except as otherwise provided herein, the Senior Priority Representatives and the Senior Priority Secured Parties shall have the exclusive right to enforce rights, exercise remedies (including setoff, recoupment, and the right to credit bid their debt) and make determinations regarding the release, disposition or restrictions with respect to the Shared Collateral or any other Senior Priority Collateral without any consultation with or the consent of any Second Priority Representative or any Second Priority Secured Party; provided, however, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Issuer or any other Grantor, any Second Priority Representative may file a claim, proof of claim, or statement of interest with respect to the Second Priority Debt Obligations under its Second Priority Debt Facility in a manner that is consistent with the terms and conditions of this Agreement, (B) any Second Priority Representative may take any action (not adverse to the prior Liens on the Shared Collateral securing the Senior Obligations or the rights of the Senior Priority Representatives or the Senior Priority Secured Parties to exercise remedies in respect thereof) in order to create, prove, perfect, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the Shared Collateral, (C) any Second Priority Representative and the Second Priority Secured Parties may exercise their rights and remedies as unsecured creditors, to the extent provided and subject to the restrictions contained in Section 5.04, (D) any Second Priority Representative may exercise the rights and remedies provided for in Section 6.03 and the Second Priority Secured Parties may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance that is not permitted by this Agreement of the claims or Liens of the Second Priority Secured Parties or the avoidance of any Second Priority Lien to the extent not inconsistent with the terms of this Agreement, (E) any Second Priority Secured Party may (subject to the provisions of Section 6.10(b)) vote on any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement or similar dispositive restructuring plan proposed in or in connection with any Insolvency or Liquidation Proceeding that conforms to the terms and conditions of this Agreement, and (F) from and after the Second Priority Enforcement Date, the Designated Second Priority Representative (or such other Person, if any, as is so authorized under the Second Lien Intercreditor Agreement) may exercise or seek to exercise any rights or remedies (including setoff or recoupment) with respect to any Shared Collateral in respect of any Second Priority Debt Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), but only so long as (1) a Senior Priority Representative has not commenced and is not diligently pursuing any enforcement action with respect to a material portion of Shared Collateral or (2) any Grantor which has granted a security interest in any Shared Collateral is not then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding. In exercising rights and remedies with respect to the Senior Priority Collateral, the Senior Priority Representatives and the Senior Priority Secured Parties may enforce the provisions of the Senior Priority Debt Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Shared Collateral upon foreclosure, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured lender under the Uniform Commercial Code or any other applicable Law of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of Senior Obligations has not occurred, except as expressly provided in the proviso to clause (ii) of Section 3.01(a) but subject to Section 4.01, each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, agrees that it will not take or receive any Shared Collateral or any Proceeds of Shared Collateral in connection with the exercise of any right or remedy (including setoff or recoupment) with respect to any Shared Collateral in respect of Second Priority Debt Obligations. Without limiting the generality of the foregoing, unless and until the Discharge of Senior Obligations has occurred, except as expressly provided in the proviso in clause (ii) of Section 3.01(a), the sole right of the Second Priority Representatives and the Second Priority Secured Parties with respect to the Shared Collateral is to hold a Lien on the Shared Collateral in respect of Second Priority Debt Obligations pursuant to the Second Priority Debt Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, after the Discharge of Senior Obligations has occurred.

(c) Subject to the proviso in clause (ii) of Section 3.01(a), (i) each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that neither such Second Priority Representative nor any such Second Priority Secured Party will take any action that would hinder or delay any exercise of remedies undertaken by any Senior Priority Representative or any Senior Priority Secured Party with respect to the Shared Collateral under the Senior Priority Debt Documents, including any Disposition of the Shared Collateral, whether by foreclosure or otherwise, and (ii) each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby waives any and all rights it or any such Second Priority Secured Party may have as a junior lien creditor or otherwise to object to the manner in which the Senior Priority Representatives or the Senior Priority Secured Parties seek to enforce or collect the Senior Obligations or the Liens granted on any of the Senior Priority Collateral, regardless of whether any action or failure to act by or on behalf of any Senior Priority Representative or any other Senior Priority Secured Party is adverse to the interests of the Second Priority Secured Parties.

(d) Each Second Priority Representative hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Priority Debt Document shall be deemed to restrict in any way the rights and remedies of the Senior Priority Representatives or the Senior Priority Secured Parties with respect to the Senior Priority Collateral as set forth in this Agreement and the Senior Priority Debt Documents.

(e) Until the Discharge of Senior Obligations, except as expressly provided in the proviso in clause (ii) of Section 3.01(a), the Designated Senior Representative shall have the exclusive right to exercise any right or remedy with respect to the Shared Collateral and shall have the exclusive right to determine and direct the time, method and place for exercising such right or remedy or conducting any proceeding with respect thereto. Following the Discharge of Senior Obligations, the Designated Second Priority Representative (or any Person authorized by it) shall have the exclusive right to exercise any right or remedy with respect to the Collateral, and the Designated Second Priority Representative shall have the exclusive right to direct the time, method and place of exercising or conducting any proceeding for the exercise of any right or remedy available to the Second Priority Secured Parties with respect to the Collateral, or of exercising or directing the exercise of any trust or power conferred on the Second Priority Representatives, or for the taking of any other action authorized by the Second Priority Collateral Documents; provided, however, that nothing in this Section shall impair the right of any Second Priority Representative or other agent or trustee acting on behalf of the Second Priority Secured Parties to take such actions with respect to the Collateral after the Discharge of Senior Obligations as may be otherwise required or authorized pursuant to any intercreditor agreement governing the Second Priority Secured Parties or the Second Priority Debt Obligations.

Section 3.02. Cooperation. Subject to the proviso in clause (ii) of Section 3.01(a), each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, agrees that, unless and until the Discharge of Senior Obligations has occurred, it will not commence, or join with any Person (other than the Senior Priority Secured Parties and the Senior Priority Representatives upon the request of the Designated Senior Representative) in commencing, any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the Shared Collateral under any of the Second Priority Debt Documents or otherwise in respect of the Second Priority Debt Obligations.

Section 3.03. Actions Upon Breach. Should any Second Priority Representative or any Second Priority Secured Party, contrary to this Agreement, in any way take, attempt to take or threaten to take any action with respect to the Shared Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement) or fail to take any action required by this Agreement, any Senior Priority Representative or other Senior Priority Secured Party (in its or their own name or in the name of the Issuer or any other Grantor) or the Issuer may obtain relief against such Second Priority Representative or such Second Priority Secured Party by injunction, specific performance or other appropriate equitable relief. Each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, hereby (i) agrees that the Senior Priority Secured Parties' damages from the actions of the Second Priority Representatives or any Second Priority Secured Party may at that time be difficult to ascertain and may be irreparable and waives any defense that the Issuer, any other Grantor or the Senior Priority Secured Parties cannot demonstrate damage or be made whole by the awarding of damages and (ii) irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by any Senior Priority Representative or any other Senior Priority Secured Party.

ARTICLE IV

PAYMENTS

Section 4.01. Application of Proceeds. So long as the Discharge of Senior Obligations has not occurred and regardless of whether an Insolvency or Liquidation Proceeding has been commenced, the Shared Collateral or Proceeds thereof received in connection with the sale or other disposition of, or collection on, such Shared Collateral upon the exercise of remedies or in connection with any Insolvency or Liquidation Proceeding shall be applied by the Designated Senior Representative to the Senior Obligations in such order as specified in (and subject to the terms of) the relevant Senior Priority Debt Documents and, if applicable, the Equal Priority Intercreditor Agreement, until the Discharge of Senior Obligations has occurred. Upon the Discharge of Senior Obligations, each applicable Senior Priority Representative shall deliver promptly to the Designated Second Priority Representative any Shared Collateral or Proceeds thereof held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct (and subject to the other terms of this Agreement), to be applied by the Designated Second Priority Representative to the Second Priority Debt Obligations in such order as specified in the relevant Second Priority Debt Documents and, if applicable, the Second Lien Intercreditor Agreement.

Section 4.02. Payments Over. So long as the Discharge of Senior Obligations has not occurred, any Shared Collateral or Proceeds thereof received by any Second Priority Representative or any Second Priority Secured Party in connection with the exercise of any right or remedy (including setoff or recoupment) relating to the Shared Collateral (except as otherwise provided in Article 6) in any Insolvency or Liquidation Proceeding, or otherwise in contravention of this Agreement shall be segregated and held in trust for the benefit of and forthwith paid over to the Designated Senior Representative for the benefit of the Senior Priority Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct (and subject to the terms of this Agreement). The Designated Senior Representative is hereby authorized to make any such endorsements as agent for each of the Second Priority Representatives or any such Second Priority Secured Party. This authorization is coupled with an interest and is irrevocable.

ARTICLE V

OTHER AGREEMENTS

Section 5.01. Releases.

(a) Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that, in the event of a Disposition of any specified item of Shared Collateral (including all or substantially all of the Equity Interests of any Subsidiary of the Issuer) (i) in connection with the exercise of remedies in respect of Collateral by a Senior Priority Representative or (ii) if not in connection with the exercise of remedies in respect of Collateral by the

Designated Senior Representative, so long as such Disposition is permitted by the terms of the Second Priority Debt Documents and the Senior Priority Debt Documents and, in the case of this clause (ii) other than in connection with the Discharge of Senior Obligations, the Liens granted to the Second Priority Representatives and the Second Priority Secured Parties upon such Shared Collateral (but not on the Proceeds thereof that were not applied to the payment of Senior Obligations) to secure Second Priority Debt Obligations, shall terminate and be released, automatically and without any further action, concurrently with the termination and release of all Liens granted upon such Shared Collateral to secure Senior Obligations; provided that the proceeds thereof are applied in accordance with Section 4.01. Upon delivery to a Second Priority Representative of an Officer's Certificate stating that any such termination and release of Liens securing the Senior Obligations has become effective (or shall become effective concurrently with such termination and release of the Liens granted to the Second Priority Secured Parties and the Second Priority Representatives) and any necessary or proper instruments of termination or release prepared by the Issuer or any other Grantor, such Second Priority Representative will promptly execute, deliver or acknowledge, at the Issuer's sole cost and expense and without any representation or warranty, such instruments to evidence such termination and release of the Liens. Nothing in this Section 5.01(a) will be deemed to affect any agreement of a Second Priority Representative, for itself and on behalf of the Second Priority Secured Parties under its Second Priority Debt Facility, to release the Liens on the Second Priority Collateral as set forth in the relevant Second Priority Debt Documents.

(b) Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby irrevocably constitutes and appoints the Designated Senior Representative and any officer or agent of the Designated Senior Representative, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Second Priority Representative or such Second Priority Secured Party or in the Designated Senior Representative's own name, from time to time in the Designated Senior Representative's discretion, for the purpose of carrying out the terms of Section 5.01(a), to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of Section 5.01(a), including any termination statements, endorsements or other instruments of transfer or release.

(c) Unless and until the Discharge of Senior Obligations has occurred, each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby consents to the application, whether prior to or after an event of default under any Senior Priority Debt Document of Proceeds of Shared Collateral to the repayment of Senior Obligations pursuant to the Senior Priority Debt Documents, provided that nothing in this Section 5.01(c) shall be construed to prevent or impair the rights of the Second Priority Representatives or the Second Priority Secured Parties to receive Proceeds in connection with the Second Priority Debt Obligations not otherwise in contravention of this Agreement.

(d) Notwithstanding anything to the contrary in any Second Priority Collateral Document, in the event the terms of a Senior Priority Collateral Document and a Second Priority Collateral Document each require any Grantor to (i) make payment in respect of any item of Shared Collateral, (ii) deliver or afford control over any item of Shared Collateral to, or deposit any item of Shared Collateral with, (iii) register ownership of any item of Shared Collateral in the name of or make an assignment of ownership of any Shared Collateral or the rights thereunder to, (iv) cause any securities intermediary, commodities intermediary or other Person acting in a similar capacity to agree to comply, in respect of any item of Shared Collateral, with instructions or orders from, or to treat, in respect of any item of Shared Collateral, as the entitlement holder, (v) hold any item of Shared Collateral in trust for (to the extent such item of Shared Collateral cannot be held in trust for multiple parties under applicable Law), (vi) obtain the agreement of a bailee or other third party to hold any item of Shared Collateral for the benefit of or subject to the control of or, in respect of any item of Shared Collateral, to follow the instructions of, or (vii) obtain the agreement of a landlord with respect to access to leased premises where any item of Shared Collateral is located or waivers or subordination of rights with respect to any item of Shared Collateral in favor of, in any case, both the Designated Senior Representative and any Second Priority Representative or Second Priority Secured Party, such Grantor may, until the applicable Discharge of Senior Obligations has occurred, comply with such requirement under the Second Priority Collateral Document as it relates to such Shared Collateral by taking any of the actions set forth above only with respect to, or in favor of, the Designated Senior Representative.

Section 5.02. Insurance and Condemnation Awards. Unless and until the Discharge of Senior Obligations has occurred, subject in each case to the rights of the Grantors under, and any limitations under, the Senior Priority Debt Documents, the Designated Senior Representative and the Senior Priority Secured Parties shall have the sole and exclusive right (a) to adjust settlement for any insurance policy covering the Shared Collateral in the event of any loss thereunder and (b) to approve any award granted in any condemnation or similar proceeding affecting the Shared Collateral. Unless and until the Discharge of Senior Obligations has occurred, and subject to the rights of the Grantors under, and any limitations under, the Senior Priority Debt Documents and the Second Priority

Debt Documents, all proceeds of any such policy and any such award, if in respect of the Shared Collateral, shall be paid (i) first, prior to the occurrence of the Discharge of Senior Obligations, to the Designated Senior Representative for the benefit of Senior Priority Secured Parties pursuant to the terms of the Senior Priority Debt Documents, (ii) second, after the occurrence of the Discharge of Senior Obligations, to the Designated Second Priority Representative for the benefit of the Second Priority Secured Parties pursuant to the terms of the applicable Second Priority Debt Documents and, if applicable, the Second Lien Intercreditor Agreement, and (iii) third, if no Second Priority Debt Obligations or Senior Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If any Second Priority Representative or any Second Priority Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the Designated Senior Representative (or after the Discharge of Senior Obligations, the Designated Second Priority Representative) to receive such amounts in accordance with the terms of Section 4.02.

Section 5.03. Certain Amendments.

(a) No Second Priority Collateral Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Second Priority Collateral Document, would be prohibited by or conflict with any of the terms of this Agreement. The Issuer agrees to deliver to the Designated Senior Representative copies of (i) any amendments, supplements or other modifications to the Second Priority Collateral Documents and (ii) any new Second Priority Collateral Documents promptly after effectiveness thereof. Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that each Second Priority Collateral Document under its Second Priority Debt Facility shall include the following language (or language to similar effect reasonably approved by the Designated Senior Representative):

> "Notwithstanding anything herein to the contrary, (i) the liens and security interests granted to the Second Priority Representative pursuant to this Agreement are expressly subject and subordinate to the liens and security interests granted in favor of the Senior Priority Secured Parties (as defined in the First Lien/Second Lien Intercreditor Agreement referred to below), including liens and security interests granted to U.S. Bank Trust Company, National Association, as notes collateral agent, pursuant to or in connection with the Indenture dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among Accelerate Diagnostics, Inc. and U.S. Bank Trust Company, National Association, as trustee and notes collateral agent, and (ii) the exercise of any right or remedy by the Second Priority Representative or any other secured party hereunder is subject to the limitations and provisions of the First Lien/Second Lien Intercreditor Agreement dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "First Lien/Second Lien Intercreditor Agreement"), among U.S. Bank Trust Company, National Association, as Super-Priority Collateral Agent, U.S. Bank Trust Company, National Association, as Initial Second Lien Representative, Accelerate Diagnostics, Inc., as issuer and the other parties thereto. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement and the terms of this Agreement, the terms of the First Lien/Second Lien Intercreditor Agreement shall govern."

(b) In the event that each applicable Senior Priority Representative and/or the Senior Priority Secured Parties enter into any amendment, waiver or consent in respect of any of the Senior Priority Collateral Documents for the purpose of adding to or deleting from, or waiving or consenting to any departures from any provisions of, any Senior Priority Collateral Document or changing in any manner the rights of the Senior Priority Representatives, the Senior Priority Secured Parties, the Issuer or any other Grantor thereunder (including the release of any Liens in Senior Priority Collateral) in a manner that is applicable to all Senior Priority Debt Facilities, then such amendment, waiver or consent shall apply automatically to any comparable provision of each comparable Second Priority Collateral Document without the consent of any Second Priority Representative or any Second Priority Secured Party and without any action by any Second Priority Representative, the Issuer or any other Grantor; provided, however, that (x) no such amendment, waiver or consent shall (i) remove assets subject to the Lien of any Second Priority Collateral Document, except as provided for in Section 5.01(a) or (ii) impose duties that are adverse on any Second Priority Representative without its prior written consent and

(y) written notice of such amendment, waiver or consent shall have been given by the Issuer to each Second Priority Representative within 10 Business Days after the effectiveness of such amendment, waiver or consent (although the failure to give any such notice shall in no way affect the effectiveness of such amendment, waiver or consent).

(c) Each of the Senior Priority Debt Documents may be amended, restated, amended and restated, waived, supplemented or otherwise modified in accordance with its terms, and the indebtedness under any Senior Priority Debt Document may be Refinanced, in each case, without the consent of any Second Priority Representative or Second Priority Secured Party, all without affecting the Lien priorities provided for herein or the other provisions hereof; provided, however, that, without the consent of the Second Priority Representatives, no such amendment, restatement, supplement, modification or Refinancing (or successive amendments, restatements, supplements, modifications or Refinancings) shall contravene any provision of this Agreement.

(d) Each of the Second Priority Debt Facilities may be amended, restated, amended and restated, waived, supplemented or otherwise modified in accordance with its terms, and the indebtedness under the Second Priority Debt Facilities may be Refinanced without the consent of any Senior Priority Representative or Senior Priority Secured Party; provided, however, that, without the consent of (x) until the Discharge of Super-Priority Notes Obligations, the Super-Priority Collateral Agent, acting with the consent of the Required Holders (as such term is defined in the Super-Priority Notes Indenture) and (y) each other Senior Priority Representative (acting with the consent of the requisite holders of each series of Additional Senior Priority Debt), no such amendment, restatement, supplement or modification shall (1) contravene any provision of this Agreement, or (2) reduce the capacity to incur Indebtedness for borrowed money constituting Senior Obligations to an amount less than the aggregate principal amount of notes and term loans and aggregate principal amount of revolving commitments, in each case, under the Senior Priority Debt Documents on the day of any such amendment, restatement, supplement, modification or Refinancing.

Section 5.04. Rights As Unsecured Creditors. The Second Priority Representatives and the Second Priority Secured Parties may exercise rights and remedies as unsecured creditors against the Issuer and any other Grantor in accordance with the terms of the Second Priority Debt Documents and applicable Law so long as such rights and remedies do not violate, or are not otherwise inconsistent with, any other provision of this Agreement. Nothing in this Agreement shall prohibit the receipt by any Second Priority Representative or any Second Priority Secured Party of the required payments of principal, premium, interest, fees and other amounts due under the Second Priority Debt Documents so long as such receipt is not the direct or indirect result of the exercise by a Second Priority Representative or any Second Priority Secured Party of rights or remedies in respect of Shared Collateral. In the event any Second Priority Representative or any Second Priority Secured Party becomes a judgment Lien creditor in respect of Shared Collateral as a result of its enforcement of its rights as an unsecured creditor in respect of Second Priority Debt Obligations, such judgment Lien shall be subordinated to the Liens securing Senior Obligations on the same basis as the other Liens securing the Second Priority Debt Obligations are so subordinated to such Liens securing Senior Obligations under this Agreement. Nothing in this Agreement shall impair or otherwise adversely affect any rights or remedies the Senior Priority Representatives or the Senior Priority Secured Parties may have with respect to the Senior Priority Collateral.

Section 5.05. Gratuitous Bailee for Perfection.

(a) Each Senior Priority Representative acknowledges and agrees that if it shall at any time hold a Lien securing any Senior Obligations on any Shared Collateral that can be perfected by the possession or control of such Shared Collateral or of any account in which such Shared Collateral is held, and if such Shared Collateral or any such account is in fact in the possession or under the control of such Senior Priority Representative, or of agents or bailees of such Person (such Shared Collateral being referred to herein as the "Pledged or Controlled Collateral"), or if it shall at any time obtain any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral, or with respect to any Shared Collateral subject to any other arrangement set forth in Section 5.01(d), the applicable Senior Priority Representative shall also hold such Pledged or Controlled Collateral, or take such actions with respect to such landlord waiver, bailee's letter or similar agreement or arrangement, as sub-agent and gratuitous bailee for the relevant Second Priority Representatives, in each case solely for the purpose of perfecting the Liens granted under the relevant Second Priority Collateral Documents and subject to the terms and conditions of this Section 5.05.

(b) In the event that any Senior Priority Representative (or its agents or bailees), or after the Discharge of Senior Obligations, any Second Priority Representative, has Lien filings against Intellectual Property that is part of the Shared Collateral that are necessary for the perfection of Liens in such Shared Collateral, such Senior Priority Representative, or after the Discharge of Senior Obligations, such Second Priority Representative, agrees to hold such Liens as sub-agent and gratuitous bailee for the relevant Second

Priority Representatives and any assignee thereof, solely for the purpose of perfecting the security interest granted in such Liens pursuant to the relevant Second Priority Collateral Documents, subject to the terms and conditions of this Section 5.05.

(c) Except as otherwise specifically provided herein, until the Discharge of Senior Obligations has occurred, the Senior Priority Representatives and the Senior Priority Secured Parties shall be entitled to deal with the Pledged or Controlled Collateral in accordance with the terms of the Senior Priority Debt Documents as if the Liens under the Second Priority Collateral Documents did not exist. The rights of the Second Priority Representatives and the Second Priority Secured Parties with respect to the Pledged or Controlled Collateral shall at all times be subject to the terms of this Agreement.

(d) The Senior Priority Representatives and the Senior Priority Secured Parties shall have no obligation whatsoever to the Second Priority Representatives or any Second Priority Secured Party to assure that any of the Pledged or Controlled Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the Shared Collateral, except as expressly set forth in this Section 5.05. The duties or responsibilities of the Senior Priority Representatives (and after the Discharge of Senior Obligations, the Second Priority Representatives) under this Section 5.05 shall be limited solely to holding or controlling the Shared Collateral and the related Liens referred to in paragraphs (a) and (b) of this Section 5.05 as sub-agent and gratuitous bailee for the relevant Second Priority Representative for purposes of perfecting the Lien held by such Second Priority Representative and delivering the Shared Collateral upon a Discharge of Senior Obligations as set forth in Section 5.05(f).

(e) The Senior Priority Representatives shall not have by reason of the Second Priority Collateral Documents or this Agreement, or any other document, a fiduciary relationship in respect of any Second Priority Representative or any Second Priority Secured Party, and each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby waives and releases the Senior Priority Representatives from all claims and liabilities arising pursuant to the Senior Priority Representatives' roles under this Section 5.05 as sub-agents and gratuitous bailees with respect to the Shared Collateral.

(f) Upon the Discharge of Senior Obligations, each applicable Senior Priority Representative shall, at the Issuer's sole cost and expense, (i) (A) deliver to the Designated Second Priority Representative, to the extent that it is legally permitted to do so and as the Grantors or Designated Second Priority Representative may direct, all Shared Collateral, including all Proceeds thereof, held or controlled by such Senior Priority Representative or any of its agents or bailees, including the transfer of possession and control, as applicable, of the Pledged or Controlled Collateral, together with any necessary endorsements and notices to depositary banks, securities intermediaries and commodities intermediaries, and assign to the Designated Second Priority Representative, to the extent that it is legally permitted to do so and as the Grantors or the Designated Second Priority Representative may direct, its rights under any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral, (B) if not legally permitted or no direction is given and if prior to discharge of the Second Priority Debt Obligations, deliver such Shared Collateral and assign its rights in respect thereof as a court of competent jurisdiction may otherwise direct or (C) if the Second Priority Debt Obligations have been discharged, deliver such Shared Collateral to the Grantors and terminate its rights therein as directed by the Grantors; (ii) notify any applicable insurance carrier that it is no longer entitled to be an additional loss payee or additional insured under the insurance policies of any Grantor issued by such insurance carrier; and (iii) notify any Governmental Authority involved in any condemnation or similar proceeding involving any Grantor that the Designated Second Priority Representative is entitled to approve any awards granted in such proceeding. Upon request of the Designated Second Priority Representative, the Issuer shall take such further action as is required to effectuate the transfer contemplated hereby. The Senior Priority Representatives have no obligations to follow instructions from any Second Priority Representative or any other Second Priority Secured Party in contravention of this Agreement. No Senior Priority Representative shall have any liability to any Second Priority Secured Party.

(g) None of the Senior Priority Representatives nor any of the other Senior Priority Secured Parties shall be required to marshal any present or future collateral security for any obligations of the Issuer or any other Grantor to any Senior Priority Representative or any Senior Priority Secured Party under the Senior Priority Debt Documents or any assurance of payment in respect thereof, or to resort to such collateral security or other assurances of payment in any particular order, and all of their rights in respect of

such collateral security or any assurance of payment in respect thereof shall be cumulative and in addition to all other rights, however existing or arising.

Section 5.06. When Discharge of Senior Obligations Deemed To Not Have Occurred. If, at any time substantially concurrently with or after the Discharge of Senior Obligations has occurred, the Issuer or any other Grantor consummates any Refinancing or incurs any Senior Obligations (other than in respect of the payment of indemnities surviving the Discharge of Senior Obligations), then such Discharge of Senior Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such designation as a result of the occurrence of such first Discharge of Senior Obligations) and the applicable agreement governing such Senior Obligations shall automatically be treated as a Senior Priority Debt Document for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Shared Collateral set forth herein and the agent, representative or trustee for the holders of such Senior Obligations shall be the Senior Priority Representative for all purposes of this Agreement; provided that such Senior Priority Representative shall have become a party to this Agreement pursuant to Section 8.09. Upon receipt of notice of such incurrence (including the identity of the new Senior Priority Representative), each Second Priority Representative (including the Designated Second Priority Representative) shall promptly (a) enter into such documents and agreements (at the expense of the Issuer), including amendments, supplements or modifications to this Agreement, as the Issuer or such new Senior Priority Representative shall reasonably request in writing in order to provide the new Senior Priority Representative the rights of a Senior Priority Representative contemplated hereby and (b) deliver to such Senior Priority Representative, to the extent that it is legally permitted to do so, all Shared Collateral, including all Proceeds thereof, held or controlled by such Second Priority Representative or any of its agents or bailees, including the transfer of possession and control, as applicable, of the Pledged or Controlled Collateral, together with any necessary endorsements and notices to depositary banks, securities intermediaries and commodities intermediaries, and assign to such Senior Priority Representative, to the extent that it is legally permitted to do so, its rights under any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral.

Section 5.07. Purchase Right. Without prejudice to the enforcement of the Senior Priority Secured Parties' remedies, the Senior Priority Secured Parties agree that following (a) the acceleration of all of the Senior Obligations in accordance with the terms of the applicable Senior Priority Debt Documents governing the terms thereof or (b) the commencement of an Insolvency or Liquidation Proceeding (each, a "Purchase Event"), within thirty (30) days of the Purchase Event, one or more of the Second Priority Secured Parties may request, and such Senior Priority Secured Parties hereby offer the Second Priority Secured Parties the option, to purchase all, but not less than all, of the aggregate amount of outstanding Senior Obligations outstanding at the time of purchase at par, plus any premium that would be applicable upon prepayment of such Senior Obligations and accrued and unpaid interest, fees, and expenses (including those accruing after the commencement of any Insolvency or Liquidation Proceeding) without warranty or representation or recourse (except, in the case of the Super-Priority Notes Obligations, for representations and warranties required to be made by assigning investors pursuant to the Super-Priority Notes Documents). If such right is exercised, the parties shall endeavor to close promptly thereafter but in any event within ten (10) Business Days of the request. If one or more of the Second Priority Secured Parties exercise such purchase right, the documentation relating thereto shall be mutually acceptable to each of the Senior Priority Representatives and the applicable Second Priority Representative(s) named as a Representative for such exercising Second Priority Secured Parties. If none of the Second Priority Secured Parties timely exercise such right, the Senior Priority Secured Parties shall have no further obligations pursuant to this Section 5.07 for such Purchase Event and may take any further actions in their sole discretion in accordance with the Senior Priority Debt Documents and this Agreement.

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS

Section 6.01. Financing and Sale Issues. Until the Discharge of Senior Obligations has occurred, if the Issuer or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding, then each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that (A) if any Senior Priority Representative shall desire to consent (or not object) to the sale, use or lease of cash or other collateral and/or to consent (or not object) to the Issuer's or any other Grantor's obtaining financing under Section 363 or Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law ("DIP Financing"), it will raise no objection to and will not otherwise contest such sale, use or lease of such cash or other collateral or such DIP Financing and, except to the extent permitted by the proviso in clause (ii) of Section 3.01(a) and Section 6.03, will not request adequate protection or any other relief in connection therewith and, to the extent the Liens securing any Senior Obligations are subordinated to or have the same priority as the Liens securing such DIP Financing, will subordinate (and will be deemed hereunder

to have subordinated) its Liens in the Shared Collateral to (x) the Liens securing such DIP Financing (and all obligations relating thereto) on the same basis as the Liens securing the Second Priority Debt Obligations are so subordinated to Liens securing Senior Obligations under this Agreement, so long as the sum of (a) the maximum aggregate principal amount of Indebtedness that may be outstanding from time to time under such DIP Financing (including any such portion thereof that constitutes rollover of loans under the Senior Priority Debt Documents) plus, without duplication, (b) the aggregate principal amount of loans and the aggregate face amount of letters of credit issued but not reimbursed under the Senior Priority Debt Documents does not exceed 115% of the greater of (x) $15,000,000 and (y) the aggregate principal amount of loans under the Senior Priority Debt Documents outstanding at the time the DIP Financing is entered into (for the avoidance of doubt, before giving effect to any rollover of any Indebtedness (including letters of credit) under the Senior Priority Debt Documents into the DIP Financing), (y) any "carve-out" for professional and United States Trustee and court fees agreed to by the Senior Priority Representatives, and (z) all adequate protection liens granted to the Senior Priority Secured Parties, (B) it will raise no objection to and will not otherwise contest any motion for relief from the automatic stay in Section 362 of the Bankruptcy Code or any other stay in any Insolvency or Liquidation Proceedings or from any injunction against foreclosure or enforcement in respect of Senior Obligations or the Senior Priority Collateral made by any Senior Priority Representative or any other Senior Priority Secured Party, (C) it will raise no objection to and will not otherwise contest any lawful exercise by any Senior Priority Secured Party of the right to credit bid Senior Obligations at any foreclosure or other sale of Senior Priority Collateral, including pursuant to Section 363(k) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law or other applicable law, (D) it will raise no objection to and will not otherwise contest any other request for judicial relief made in any court by any Senior Priority Secured Party relating to the lawful enforcement of any Lien on Senior Priority Collateral, (E) it will raise no objection to and will not otherwise contest any election made by any Senior Priority Representative or any other Senior Priority Secured Party of the application of Section 1111(b) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law with respect to any of the Shared Collateral, and (F) it will raise no objection to and will not otherwise contest or oppose any Disposition (including pursuant to Section 363 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law) of assets of any Grantor for or to which any Senior Priority Representative has consented or not objected that provides, to the extent such Disposition is to be free and clear of Liens, that the Liens securing the Senior Obligations and the Second Priority Debt Obligations will attach to the Proceeds of the sale on the same basis of priority as the Liens on the Shared Collateral securing the Senior Obligations rank to the Liens on the Shared Collateral securing the Second Priority Debt Obligations pursuant to this Agreement; provided, that the Second Priority Secured Parties may assert any objection to the proposed bidding and related sale procedures to be utilized in connection with such Disposition that may be raised by an unsecured creditor of any Grantor; provided, further, that the Second Priority Secured Parties are not deemed to have waived any rights to credit bid on the Shared Collateral in any such sale or disposition in accordance with Section 363(k) of the Bankruptcy Code (or any similar provision under any other Bankruptcy Law or other applicable law), so long as any such credit bid provides for the payment in full in cash and/or in such other form of consideration as may be agreed to by the Senior Priority Secured Parties of the Senior Obligations. Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that notice received three (3) Business Days prior to the entry of an order approving any usage of cash or other collateral described in this Section 6.01 or approving any DIP Financing described in this Section 6.01 shall be adequate notice.

Section 6.02. Relief from the Automatic Stay. Until the Discharge of Senior Obligations has occurred, each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that none of them shall seek relief from the automatic stay in Section 362 of the Bankruptcy Code or any other stay in any Insolvency or Liquidation Proceeding or take any action in derogation thereof, in each case in respect of any Shared Collateral, without the prior written consent of the Designated Senior Representative.

Section 6.03. Adequate Protection. Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, agrees that none of them shall object to, contest or support any other Person objecting to or contesting (a) any request by any Senior Priority Representative or any Senior Priority Secured Parties for adequate protection in any form, (b) any objection by any Senior Priority Representative or any Senior Priority Secured Parties to any motion, relief, action or proceeding based on any Senior Priority Representative's or Senior Priority Secured Party's claiming a lack of adequate protection or (c) the allowance and/or payment of pre- and/or post-petition interest, fees, expenses or other amounts of any Senior Priority Representative or any other Senior Priority Secured Party under Section 506(b) or 506(c) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law (as adequate protection or otherwise). Notwithstanding anything contained in this Section 6.03 or in Section 6.01, in any Insolvency or Liquidation Proceeding, (i) if the Senior Priority Secured Parties (or any subset thereof) are granted adequate protection in the form of a Lien on additional or replacement collateral and/or superpriority administrative expense claims in connection with any DIP Financing or use of cash collateral under Section 363 or 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law, then each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party

under its Second Priority Debt Facility, may seek or request adequate protection in the form of a Lien on such additional or replacement collateral and/or a superpriority administrative expense claim (as applicable), which Lien and/or superpriority administrative expense claim (as applicable) is subordinated to the Liens securing, and claims with respect to, all Senior Obligations and such DIP Financing (and all obligations relating thereto) and any other Liens or claims granted to the Senior Priority Secured Parties as adequate protection, on the same basis as the other Liens securing, and claims with respect to, the Second Priority Debt Obligations are so subordinated to the Liens securing, and claims with respect to, Senior Obligations under this Agreement and (ii) in the event any Second Priority Representatives, for themselves and on behalf of the Second Priority Secured Parties under their Second Priority Debt Facilities, seek or request adequate protection and such adequate protection is granted (in each instance, to the extent such grant is otherwise permissible under the terms and conditions of this Agreement) in the form of a Lien on additional or replacement collateral and/or a superpriority administrative expense claim, then such Second Priority Representatives, for themselves and on behalf of each Second Priority Secured Party under their Second Priority Debt Facilities, agree that each Senior Priority Representative shall also be granted a senior Lien on such additional or replacement collateral as security and adequate protection for the Senior Obligations and any such DIP Financing and/or a superpriority claim (as applicable) and that any Lien on such additional or replacement collateral securing or providing adequate protection for the Second Priority Debt Obligations and/or superpriority administrative expense claim (as applicable) shall be subordinated to the Liens on such collateral securing, and claims with respect to, the Senior Obligations and any such DIP Financing (and all obligations relating thereto) and any other Liens or claims granted to the Senior Priority Secured Parties as adequate protection on the same basis as the other Liens securing, and claims with respect to, the Second Priority Debt Obligations are so subordinated to such Liens securing, and claims with respect to, Senior Obligations under this Agreement. Without limiting the generality of the foregoing, to the extent that the Senior Priority Secured Parties are granted adequate protection in the form of payments in the amount of current post-petition fees and expenses, and/or other cash payments, then the Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, shall not be prohibited from seeking adequate protection in the form of payments in the amount of current post-petition incurred fees and expenses, and/or other cash payments (as applicable), subject to the right of the Senior Priority Secured Parties to object to the reasonableness of the amounts of fees and expenses or other cash payments so sought by the Second Priority Secured Parties.

Section 6.04. Preference Issues. If any Senior Priority Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to disgorge, turn over or otherwise pay any amount to the estate of the Issuer or any other Grantor (or any trustee, receiver or similar Person therefor), because the payment of such amount was avoided as or otherwise declared to be fraudulent or preferential in any respect or for any other reason (any such amount, a "Recovery"), whether received as proceeds of security, enforcement of any right of setoff, recoupment or otherwise, then the Senior Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the Senior Priority Secured Parties shall be entitled to the benefits of this Agreement until a Discharge of Senior Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby agrees that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

Section 6.05. Separate Grants of Security and Separate Classifications. Each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, acknowledges and agrees that (a) the grants of Liens pursuant to the Senior Priority Collateral Documents and the Second Priority Collateral Documents constitute separate and distinct grants of Liens and (b) because of, among other things, their differing rights in the Shared Collateral, the Second Priority Debt Obligations are fundamentally different from the Senior Obligations and must be separately classified in any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement or similar dispositive restructuring plan proposed, confirmed, or adopted in any Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that any claims of the Senior Priority Secured Parties and the Second Priority Secured Parties in respect of the Shared Collateral constitute a single class of claims (rather than separate classes of senior and junior secured claims), then each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby acknowledges and agrees that all distributions from the Shared Collateral shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Shared Collateral (with the effect being that, to the extent that the aggregate value of the Shared Collateral is sufficient (for this purpose ignoring all claims held by the Second Priority Secured Parties), the Senior Priority Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest,

fees, and expenses, and other claims, all amounts owing in respect of post-petition interest, fees, and expenses (whether or not allowed or allowable under Section 506(b) of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law) or otherwise in such Insolvency or Liquidation Proceeding) before any distribution from the Shared Collateral is made in respect of the Second Priority Debt Obligations, with each Second Priority Representative, for itself and on behalf of each Second Priority Secured Party under its Second Priority Debt Facility, hereby acknowledging and agreeing to turn over to the Designated Senior Representative amounts otherwise received or receivable by them from the Shared Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Priority Secured Parties).

Section 6.06. No Waivers of Rights of Senior Priority Secured Parties. Nothing contained herein shall, except as expressly provided herein, prohibit or in any way limit any Senior Priority Representative or any other Senior Priority Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by any Second Priority Secured Party, including the seeking by any Second Priority Secured Party of adequate protection or the asserting by any Second Priority Secured Party of any of its rights and remedies under the Second Priority Debt Documents or otherwise.

Section 6.07. Application. This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law, shall be effective before, during and after the commencement of any Insolvency or Liquidation Proceeding. The relative rights as to the Shared Collateral and Proceeds thereof shall continue after the commencement of any Insolvency or Liquidation Proceeding on the same basis as prior to the date of the petition therefor, subject to any court order approving the financing of, or use of cash collateral by, any Grantor. All references herein to any Grantor shall include such Grantor as a debtor-in-possession and any receiver or trustee for such Grantor.

Section 6.08. Other Matters. To the extent that any Second Priority Representative or any Second Priority Secured Party has or acquires rights under Section 363 or Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law with respect to any of the Shared Collateral, such Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, agrees not to assert any such rights without the prior written consent of each Senior Priority Representative, provided that if requested by any Senior Priority Representative, such Second Priority Representative shall timely exercise such rights in the manner requested by the Senior Priority Representatives (acting unanimously), including any rights to payments in respect of such rights.

Section 6.09. 506(c) Claims. Until the Discharge of Senior Obligations has occurred, each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, agrees that it will not assert or enforce any claim under Section 506(c) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law senior to or on a parity with the Liens securing the Senior Obligations for costs or expenses of preserving or disposing of any Shared Collateral.

Section 6.10. Reorganization Securities; Voting.

(a) If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed, pursuant to a plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement or similar dispositive restructuring plan proposed, confirmed, or adopted in an Insolvency or Liquidation Proceeding or otherwise, on account of both the Senior Obligations and the Second Priority Debt Obligations, then, to the extent the debt obligations distributed on account of the Senior Obligations and on account of the Second Priority Debt Obligations are secured by Liens upon the same assets or property, the provisions of this Agreement will survive the distribution of such debt obligations and will apply with like effect to the Liens securing such debt obligations.

(b) No Second Priority Secured Party (whether in the capacity of a secured creditor or an unsecured creditor) shall propose, vote in favor of, or otherwise directly or indirectly support any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement or similar dispositive restructuring plan that is inconsistent with or otherwise violates the priorities or other provisions of this Agreement. Without limiting the generality of the foregoing, other than with the prior

written consent of the Designated Senior Representative, no Second Priority Secured Party (whether in the capacity of a secured creditor or an unsecured creditor) shall vote in favor of any such plan unless that plan (i) satisfies the Senior Obligations in full in cash and/or in such other form of consideration as may be agreed to by the Senior Priority Secured Parties or (ii) is proposed or supported by the number of Senior Priority Secured Parties required under Section 1126(c) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law.

Section 6.11. Post-Petition Interest.

(a) Neither any Second Priority Representative nor any other Second Priority Secured Party shall oppose or seek to challenge any claim by any Senior Priority Representative or any other Senior Priority Secured Party for allowance in any Insolvency or Liquidation Proceeding of Senior Obligations consisting of claims for post-petition interest, fees, or expenses under Section 506(b) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law or otherwise.

(b) No Senior Priority Representative nor any other Senior Priority Secured Party shall oppose or seek to challenge any claim by any Second Priority Representative or any other Second Priority Secured Party for allowance in any Insolvency or Liquidation Proceeding of Second Priority Debt Obligations consisting of claims for post-petition interest, fees, or expenses under Section 506(b) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law or otherwise, to the extent of the value of the Lien of the Second Priority Representatives on behalf of the Second Priority Secured Parties on the Shared Collateral (after taking into account the Senior Obligations and the Liens of the Senior Priority Secured Parties on the Shared Collateral).

ARTICLE VII

RELIANCE; ETC.

Section 7.01. Reliance. The consent by the Second Priority Secured Parties to the execution and delivery of the Senior Priority Debt Documents to which the Second Priority Secured Parties have consented and all loans and other extensions of credit made or deemed made on and after the date hereof by the Senior Priority Secured Parties to the Issuer or any other Grantor shall be deemed to have been given and made in reliance upon this Agreement. Each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, acknowledges that it and such Second Priority Secured Parties have, independently and without reliance on any Senior Priority Representative or other Senior Priority Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Second Priority Debt Documents to which they are party or by which they are bound, this Agreement and the transactions contemplated hereby and thereby, and they will continue to make their own credit decision in taking or not taking any action under the Second Priority Debt Documents or this Agreement.

Section 7.02. No Warranties or Liability. Each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, acknowledges and agrees that neither any Senior Priority Representative nor any other Senior Priority Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Senior Priority Debt Documents, the ownership of any Shared Collateral or the perfection or priority of any Liens thereon. The Senior Priority Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Senior Priority Debt Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Senior Priority Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that the Second Priority Representatives and the Second Priority Secured Parties have in the Shared Collateral or otherwise, except as otherwise provided in this Agreement. Neither any Senior Priority Representative nor any other Senior Priority Secured Party shall have any duty to any Second Priority Representative or Second Priority Secured Party to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreement with the Issuer or any other Grantor (including the Second Priority Debt Documents), regardless of any knowledge thereof that they may have or be charged with. Except as expressly set forth in this Agreement, the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties have not otherwise made to each other, nor do they hereby make to each other, any warranties, express or implied, nor do they assume any liability to each other with respect to (a) the enforceability, validity, value or collectibility of any of the Senior Obligations, the Second Priority Debt Obligations or any guarantee or security which may have been granted to any of them in connection therewith, (b) any Grantor's title to or right to transfer any of the Shared Collateral or (c) any other matter except as expressly set forth in this Agreement.

Section 7.03. Obligations Unconditional. All rights, interests, agreements and obligations of the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Senior Priority Debt Document or any Second Priority Debt Document;

(b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Obligations or Second Priority Debt Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of the Super-Priority Notes Indenture or any other Senior Priority Debt Document or of the terms of any Second Priority Debt Document;

(c) any exchange of any security interest in any Shared Collateral or any other collateral or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Senior Obligations or Second Priority Debt Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Issuer or any other Grantor; or

(e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, (i) the Issuer or any other Grantor in respect of the Senior Obligations (other than the Discharge of Senior Obligations subject to Sections 5.06 and 6.04 hereof) or (ii) any Second Priority Representative or Second Priority Secured Party in respect of this Agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Conflicts. Subject to Sections 8.18 and 8.23, in the event of any conflict between the provisions of this Agreement and the provisions of any Senior Priority Debt Document or any Second Priority Debt Document, the provisions of this Agreement shall govern. Notwithstanding the foregoing, the relative rights and obligations of the Senior Priority Representatives and the Senior Priority Secured Parties (as amongst themselves) with respect to any Senior Priority Collateral shall be governed by the terms of the Equal Priority Intercreditor Agreement and in the event of any conflict between the Equal Priority Intercreditor Agreement and this Agreement, the provisions of the Equal Priority Intercreditor Agreement shall control.

Section 8.02. Continuing Nature of This Agreement; Severability. Subject to Section 5.06 and Section 6.04, this Agreement shall continue to be effective until the Discharge of Senior Obligations shall have occurred. This is a continuing agreement of Lien subordination, and the Senior Priority Secured Parties may continue, at any time and without notice to the Second Priority Representatives or any Second Priority Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Issuer or any other Subsidiary constituting Senior Obligations in reliance hereon. The terms of this Agreement shall survive and continue in full force and effect in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8.03. Amendments; Waivers.

(a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for

the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) This Agreement may be amended in writing signed by each Representative (in each case, acting in accordance with the documents governing the applicable Debt Facility); provided that any such amendment, supplement or waiver (i) which by the terms of this Agreement requires any Grantor's consent, (ii) which amends, modifies or waives any provision of Section 5.01, 5.02, 5.03, 5.05, 6.01, this Section 8.03, 8.09, 8.18 or 8.23 or (iii) which increases the obligations or reduces the rights of, imposes additional duties on, or otherwise adversely affects any Grantor, shall require the consent of the Issuer. Any such amendment, supplement or waiver shall be in writing and shall be binding upon the Senior Priority Secured Parties and the Second Priority Secured Parties and their respective permitted successors and assigns. Notwithstanding the foregoing, this Agreement may be amended without the consent of each Representative (in each case, acting in accordance with the documents governing the applicable Debt Facility), to include acknowledgments from additional Grantors.

(c) Notwithstanding the foregoing, without the consent of any existing Collateral Agent or any other Secured Party, any Representative may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 8.09 and, upon such execution and delivery, such Representative and the Secured Parties and Senior Obligations or Second Priority Debt Obligations of the Debt Facility for which such Representative is acting shall be subject to the terms hereof.

Section 8.04. Information Concerning Financial Condition of the Issuer and the Other Subsidiaries. The Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties shall each be responsible for keeping themselves informed of (a) the financial condition of the Issuer and the other Subsidiaries and all endorsers or guarantors of the Senior Obligations or the Second Priority Debt Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Senior Obligations or the Second Priority Debt Obligations. The Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties shall have no duty to advise any other party hereunder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that any Senior Priority Representative, any Senior Priority Secured Party, any Second Priority Representative or any Second Priority Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other party, it shall be under no obligation to (i) make, and the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties shall not make or be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) provide any additional information or to provide any such information on any subsequent occasion, (iii) undertake any investigation or (iv) disclose any information that, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

Section 8.05. Subrogation. Each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, hereby agrees not to assert any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Senior Obligations has occurred.

Section 8.06. Application of Payments. Except as otherwise provided herein, all payments received by the Senior Priority Secured Parties may be applied, reversed and reapplied, in whole or in part, to such part of the Senior Obligations as the Senior Priority Secured Parties, in their sole discretion, deem appropriate, consistent with the terms of the Senior Priority Debt Documents. Except as otherwise provided herein, each Second Priority Representative, on behalf of itself and each Second Priority Secured Party under its Second Priority Debt Facility, assents to any such extension or postponement of the time of payment of the Senior Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the Senior Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

Section 8.07. [Reserved.]

Section 8.08. Dealings with Grantors. Upon any application or demand by the Issuer or any other Grantor to any Representative to take or permit any action under any of the provisions of this Agreement, upon such Representative's reasonable request, the Issuer shall furnish to such Representative a certificate of a duly authorized officer of the Issuer (an "Officer's Certificate") stating that all conditions precedent, if any, provided for in this Agreement, as the case may be, relating to the proposed action have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Agreement relating to such particular application or demand, no additional certificate or opinion need be furnished.

Section 8.09. Additional Debt Facilities.

(a) To the extent, but only to the extent, permitted by the provisions of the Senior Priority Debt Documents and the Second Priority Debt Documents then in effect, the Issuer or any other Grantor may incur or issue and sell one or more series or classes of Additional Second Priority Debt and one or more series or classes of Additional Senior Priority Debt. Any such additional class or series of Additional Second Priority Debt (the "Second Priority Class Debt") may be secured by a Lien on Shared Collateral that is junior in priority to any Lien on the Shared Collateral securing or purporting to secure any Senior Obligations and equal in priority (but without regard to the control of remedies) with any Lien on the Shared Collateral securing or purporting to secure any Second Priority Debt Obligations, in each case under and pursuant to the relevant Second Priority Collateral Documents for such Second Priority Class Debt, if and subject to the condition that the Representative of any such Second Priority Class Debt (each, a "Second Priority Class Debt Representative"), acting on behalf of the holders of such Second Priority Class Debt (such Representative and holders in respect of any Second Priority Class Debt being referred to as the "Second Priority Class Debt Parties"), becomes a party to this Agreement by satisfying conditions (i) through (iii), as applicable, of the immediately succeeding paragraph, and Section 8.09(b). Any such additional class or series of Senior Priority Debt Facilities (the "Senior Priority Class Debt"; and the Senior Priority Class Debt and Second Priority Class Debt, collectively, the "Class Debt") may be secured by a Lien on Shared Collateral that is equal in priority (but without regard to the control of remedies) with any Lien on the Shared Collateral securing or purporting to secure any Senior Obligations and senior in priority to any Lien on the Shared Collateral securing or purporting to secure any Second Priority Debt Obligations, in each case under and pursuant to the Senior Priority Collateral Documents, if and subject to the condition that the Representative of any such Senior Priority Class Debt (each, a "Senior Priority Class Debt Representative"; and the Senior Priority Class Debt Representatives and Second Priority Class Debt Representatives, collectively, the "Class Debt Representatives"), acting on behalf of the holders of such Senior Priority Class Debt (such Representative and holders in respect of any such Senior Priority Class Debt being referred to as the "Senior Priority Class Debt Parties"; and the Senior Priority Class Debt Parties and Second Priority Class Debt Parties, collectively, the "Class Debt Parties"), becomes a party to this Agreement by satisfying the conditions set forth in clauses (i) through (iii), as applicable, of the immediately succeeding paragraph, and Section 8.09(b). In order for a Class Debt Representative to become a party to this Agreement:

(i) such Class Debt Representative shall have executed and delivered a Joinder Agreement substantially in the form of Annex I (if such Representative is a Second Priority Class Debt Representative) or Annex II (if such Representative is a Senior Priority Class Debt Representative) (with such changes as may be reasonably approved by the Designated Senior Representative and such Class Debt Representative, and, to the extent such changes increase the obligations or reduce the rights of a Grantor, by the Issuer) pursuant to which it becomes a Representative hereunder, and the Class Debt in respect of which such Class Debt Representative is the Representative and the related Class Debt Parties become subject hereto and bound hereby;

(b) the Issuer shall have delivered to the Designated Senior Representative an Officer's Certificate stating that the conditions set forth in this Section 8.09 are satisfied with respect to such Class Debt and, if requested, true and complete copies of each of the Second Priority Debt Documents or Senior Priority Debt Documents, as applicable, relating to such Class Debt, certified as being true and correct by an Authorized Officer of the Issuer on behalf of the relevant Grantor and identifying the obligations to be designated as Additional Senior Priority Debt or Additional Second Priority Debt, as applicable, and certifying that such obligations are permitted to be incurred and secured (I) in the case of Additional Senior Priority Debt, on a pari passu basis with the Senior Obligations and a senior basis to the Second Priority Debt Obligations, in each case, under each of the Senior Priority Debt Documents and Second Priority Debt Documents then in effect and (II) in the case of Additional Second Priority Debt, on a junior basis to the Senior Obligations and a pari passu basis with or junior basis to the Second Priority Debt Obligations, as applicable, in each case, under each of the Senior Priority Debt Documents and Second Priority Debt Documents; and

(c) the Second Priority Debt Documents or Senior Priority Debt Documents, as applicable, relating to such Class Debt shall provide, or shall be amended on terms and conditions reasonably approved by the Designated Senior Representative and

such Class Debt Representative, that each Class Debt Party with respect to such Class Debt will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Class Debt.

(i) With respect to any Class Debt that is issued or incurred after the Closing Date, the Issuer and each of the other Grantors agrees that the Issuer will take, as applicable, such actions (if any) as may from time to time reasonably be requested by any Senior Priority Representative or any Second Priority Representative, and enter into such technical amendments, modifications and/or supplements to the then existing Collateral Documents (or execute and deliver such additional Collateral Documents) as may from time to time be reasonably requested by such Persons, to ensure that the Class Debt is secured by, and entitled to the benefits of, the relevant Collateral Documents relating to such Class Debt, and each Secured Party (by its acceptance of the benefits hereof) hereby agrees to, and authorizes each applicable Senior Priority Representative and each applicable Second Priority Representative, as the case may be, to enter into, any such technical amendments, modifications and/or supplements (and additional Collateral Documents).

Section 8.10. Consent to Jurisdiction; Waivers. Each Representative, on behalf of itself and the Secured Parties of the Debt Facility for which it is acting, irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the State of New York sitting in New York City in the borough of Manhattan, the courts of the United States District Court of the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and agrees not to commence or support any such action or proceeding in any other jurisdiction;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person (or its Representative) at the address referred to in Section 8.11;

(d) agrees that nothing herein shall affect the right of any other party hereto (or any Secured Party) to effect service of process in any other manner permitted by Law; and

(e) waives, to the maximum extent not prohibited by Law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 8.10 any special, exemplary, punitive or consequential damages.

Section 8.11. Notices. All notices, requests, demands and other communications provided for or permitted hereunder shall be in writing and shall be sent:

if to the Issuer or any other Grantor, to the Issuer, at its address at:

Accelerate Diagnostics, Inc.
3950 South Country Club, Suite 470
Tuscon, AZ 85714
Attention: Jack Phillips, Chief Executive Officer; David B. Patience, Chief Financial Officer

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

Sidley Austin LLP

2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
Attention: Kristen Smith
Tel: (214) 969-3505
Email: kristen.smith@sidley.com

if to the Super-Priority Collateral Agent or to the Initial Second Lien Representative, to it at:

U.S. Bank Trust Company, National Association
Global Corporate Trust
Seattle Tower
1420 Fifth Ave, 10th Floor
PD-WA-T10W
Seattle, WA 98101
Attention: Richard Krupske (Accelerate Super Priority Notes due 2025)
Tel: (206) 340-4750Email: Richard.Krupske@usbank.com

if to any other Representative, to it at the address specified by it in the Joinder Agreement delivered by it pursuant to Section 8.09.

Unless otherwise specifically provided herein, all notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.11 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.11. Notices and other communications may also be delivered by email to the email address of a representative of the applicable Person provided from time to time by such Person.

Section 8.12. Further Assurances. Each Senior Priority Representative, on behalf of itself and each Senior Priority Secured Party under the Senior Priority Debt Facility for which it is acting, each Second Priority Representative, on behalf of itself, and each Second Priority Secured Party under its Second Priority Debt Facility, agrees that it will take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the other parties hereto may reasonably request to effectuate the terms of, and the Lien priorities contemplated by, this Agreement.

Section 8.13. Governing Law; Waiver of Jury Trial.

(A) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(B) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 8.14. Binding on Successors and Assigns. This Agreement shall be binding upon the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives, the Second Priority Secured Parties, the Issuer and their respective permitted successors and assigns.

Section 8.15. Section Titles. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

Section 8.16. Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or other electronic method, each of which shall be an original and all of which shall together constitute one and the same document. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 8.17. Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. The Super-Priority Collateral Agent represents and warrants that this Agreement is binding upon the Super-Priority Notes Secured Parties. The Initial Second Lien Representative represents and warrants that this Agreement is binding upon the Initial Second Priority Debt Secured Parties.

Section 8.18. No Third Party Beneficiaries; Successors and Assigns. The lien priorities set forth in this Agreement and the rights and benefits hereunder in respect of such lien priorities shall inure solely to the benefit of the Senior Priority Representatives, the Senior Priority Secured Parties, the Second Priority Representatives and the Second Priority Secured Parties, and their respective permitted successors and assigns, and no other Person (including the Grantors, or any trustee, receiver, debtor in possession or bankruptcy estate in a bankruptcy or like proceeding) shall have or be entitled to assert such rights; provided, however, that the Grantors will be entitled to assert such rights with respect to this Section 8.18 and Sections 2.02, 5.01(a), 5.01(d), 5.02, 5.03(b), 5.05(f), 6.07, 8.03(b), 8.08, 8.09 and 8.23.

Section 8.19. Effectiveness. This Agreement shall become effective when executed and delivered by the parties hereto.

Section 8.20. Collateral Agent and Representative. It is understood and agreed that (a) the Super-Priority Collateral Agent is entering into this Agreement in its capacity as collateral agent under the Super-Priority Notes Indenture and the provisions of Article 14 of the Super-Priority Notes Indenture applicable to the Notes Collateral Agent (as defined therein) thereunder shall also apply to the Super-Priority Collateral Agent hereunder, (b) the Initial Second Lien Representative is entering into this Agreement in its capacity as collateral agent under the Initial Second Lien Debt Agreement and the provisions of Article 17 of the Initial Second Lien Debt Agreement applicable to the Notes Collateral Agent (as defined therein) thereunder shall also apply to the Initial Second Lien Representative hereunder and (c) each other Representative party hereto is entering into this Agreement in its capacity as trustee or agent for the secured parties referenced in the applicable Additional Senior Priority Debt Document or Additional Second Priority Debt Document (as applicable) and the corresponding exculpatory and liability-limiting provisions of such agreement applicable to such Representative thereunder shall also apply to such Representative hereunder.

Section 8.21. Survival of Agreement. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

Section 8.22. Additional Grantors. The Issuer hereby represent and warrant to the Representatives that the Guarantors party hereto and the Issuer constitute the only Grantors on the Closing Date. The Issuer hereby covenants and agrees to cause each person which becomes a Grantor following the execution of this Agreement to become a party hereto (in the capacity of a Grantor) by duly executing and delivering a counterpart acknowledgment to this Agreement to each Representative.

[*SIGNATURE PAGES FOLLOW*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Super-Priority Collateral Agent, as Notes Collateral Agent

By: _____
Name:

Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Initial Second Lien Representative, as Notes Collateral Agent

By: _____
Name:
Title:

[Signature Page to First Lien/Second Lien Intercreditor Agreement]

Acknowledged and Agreed to by:

Issuer

ACCELERATE DIAGNOSTICS, INC.

By: _____
Name:
Title:

[Signature Page to First Lien/Second Lien Intercreditor Agreement]

ANNEX I

[FORM OF] SUPPLEMENT NO. [ ] (this "Representative Supplement") dated as of [ ], 20[ ] to the FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT dated as of August 8, 2024 (the "First Lien/Second Lien Intercreditor Agreement"), among U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Super-Priority Notes Secured Parties (in such capacity and together with its successors in such capacity, the "Super-Priority Collateral Agent"), U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Initial Second Priority Debt Secured Parties (in such capacity and together with its successors in such capacity, the "Initial Second Lien Representative "), and each additional Senior Priority Representative and Second Priority Representative that from time to time becomes a party thereto pursuant to Section 8.09 of the First Lien/Second Lien Intercreditor Agreement, and acknowledged and agreed to by Accelerate Diagnostics, Inc., a Delaware corporation, and the other Grantors from time to time party thereto.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the First Lien/Second Lien Intercreditor Agreement.

B. As a condition to the ability of the Issuer or any other Grantor to incur Second Priority Class Debt after the date of the First Lien/Second Lien Intercreditor Agreement and to secure such Second Priority Class Debt with the Second Priority Lien, in each case under and pursuant to the Second Priority Collateral Documents, the Second Priority Class Debt Representative in respect of such Second Priority Class Debt is required to become a Representative under, and such Second Priority Class Debt and the Second Priority Class Debt Parties in respect thereof are required to become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement. Section 8.09 of the First Lien/Second Lien Intercreditor Agreement provides that such Second Priority Class Debt Representative may become a Representative under, and such Second Priority Class Debt and such Second Priority Class Debt Parties may become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement, pursuant to the execution and delivery by the Second Priority

Class Debt Representative of an instrument in the form of this Representative Supplement and the satisfaction of the other conditions set forth in Section 8.09 of the First Lien/Second Lien Intercreditor Agreement. The undersigned Second Priority Class Debt Representative (the "New Representative") is executing this Representative Supplement in accordance with the requirements of the Senior Priority Debt Documents and the Second Priority Debt Documents.

Accordingly, the New Representative agrees as follows:

SECTION 1. In accordance with Section 8.09 of the First Lien/Second Lien Intercreditor Agreement, the New Representative by its signature below becomes a Representative under, and the related Second Priority Class Debt and Second Priority Class Debt Parties become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as a Representative, and the New Representative, on behalf of itself and such Second Priority Class Debt Parties, hereby agrees to all the terms and provisions of the First Lien/Second Lien Intercreditor Agreement applicable to it as a Second Priority Representative and to the Second Priority Class Debt Parties that it represents as Second Priority Secured Parties. Each reference to a "Representative" or "Second Priority Representative" in the First Lien/Second Lien Intercreditor Agreement shall be deemed to include the New Representative. The First Lien/Second Lien Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Representative represents and warrants to the Designated Senior Representative and the other Secured Parties that (i) it has full power and authority to enter into this Representative Supplement, in its capacity as [agent] [trustee] under [describe debt facility], (ii) this Representative Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of such Agreement and (iii) the Second Priority Debt Documents relating to such Second Priority Class Debt provide that, upon the New Representative's entry into this Agreement, the Second Priority Class Debt Parties in respect of such Second Priority Class Debt will be subject to and bound by the provisions of the First Lien/Second Lien Intercreditor Agreement as Second Priority Secured Parties.

SECTION 3. This Representative Supplement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Representative Supplement shall become effective when the Designated Senior Representative shall have received a counterpart of this Representative Supplement that bears the signature of the New Representative. Delivery of an executed signature page to this Representative Supplement by facsimile transmission or other electronic method shall be effective as delivery of a manually signed counterpart of this Representative Supplement.

SECTION 4. Except as expressly supplemented hereby, the First Lien/Second Lien Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS REPRESENTATIVE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Representative Supplement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the First Lien/Second Lien Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the First Lien/Second Lien Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to it at the address set forth below its signature hereto.

[*SIGNATURE PAGES FOLLOW*]

IN WITNESS WHEREOF, the New Representative has duly executed this Representative Supplement to the First Lien/ Second Lien Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE],
as [ ] for the holders of [ ],

By: _____
Name:
Title:

Address for notices:

_____

attention
of: _____

Telecopy: _____

Acknowledged by:

[ ]

By: _____
Name:
Title:

[ ]

By: _____
Name:
Title:

Issuer

ACCELERATE DIAGNOSTICS, INC.

By: _____
Name:
Title:

ANNEX IV

ANNEX II

[FORM OF] SUPPLEMENT NO. [ ] (this "Representative Supplement") dated as of [ ], 20[ ] to the FIRST LIEN/ SECOND LIEN INTERCREDITOR AGREEMENT dated as of August 8, 2024 (the "First Lien/Second Lien Intercreditor Agreement"), among U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Super-Priority Notes Secured Parties (in such capacity and together with its successors in such capacity, the "Super-Priority Collateral Agent"), U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Representative for the Initial Second Priority Debt Secured Parties (in such capacity and together with its successors in such capacity, the "Initial Second Lien Representative "), and each additional Senior Priority Representative and Second Priority Representative that from time to time becomes a party thereto pursuant to Section 8.09 of the First Lien/Second Lien Intercreditor Agreement, and acknowledged and agreed to by Accelerate Diagnostics, Inc., a Delaware corporation, and the other Grantors from time to time party thereto.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the First Lien/Second Lien Intercreditor Agreement.

B. As a condition to the ability of the Issuer or any other Grantor to incur Senior Priority Class Debt after the date of the First Lien/Second Lien Intercreditor Agreement and to secure such Senior Priority Class Debt with the Senior Lien, in each case under and pursuant to the Senior Priority Collateral Documents, the Senior Priority Class Debt Representative in respect of such Senior Priority Class Debt is required to become a Representative under, and such Senior Priority Class Debt and the Senior Priority Class Debt Parties in respect thereof are required to become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement. Section 8.09 of the First Lien/Second Lien Intercreditor Agreement provides that such Senior Priority Class Debt Representative may become a Representative under, and such Senior Priority Class Debt and such Senior Priority Class Debt Parties may become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement, pursuant to the execution and delivery by the Senior Priority Class Debt Representative of an instrument in the form of this Representative Supplement and the satisfaction of the other conditions set forth in Section 8.09 of the First Lien/Second Lien Intercreditor Agreement. The undersigned Senior Priority Class Debt Representative (the "New Representative") is executing this Representative Supplement in accordance with the requirements of the Senior Priority Debt Documents and the Second Priority Debt Documents.

Accordingly, the New Representative agrees as follows:

SECTION 1. In accordance with Section 8.09 of the First Lien/Second Lien Intercreditor Agreement, the New Representative by its signature below becomes a Representative under, and the related Senior Priority Class Debt and Senior Priority Class Debt Parties become subject to and bound by, the First Lien/Second Lien Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as a Representative, and the New Representative, on behalf of itself and such Senior Priority Class Debt Parties, hereby agrees to all the terms and provisions of the First Lien/Second Lien Intercreditor Agreement applicable to it as a Senior Priority Representative and to the Senior Priority Class Debt Parties that it represents as Senior Priority Secured Parties. Each reference to a "Representative" or "Senior Priority Representative" in the First Lien/Second Lien Intercreditor Agreement shall be deemed to include the New Representative. The First Lien/Second Lien Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Representative represents and warrants to the Designated Senior Representative and the other Secured Parties that (i) it has full power and authority to enter into this Representative Supplement, in its capacity as [agent] [trustee] under [describe debt facility], (ii) this Representative Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of such Agreement and (iii) the Senior Priority Debt Documents relating to such Senior Priority Class Debt provide that, upon the New Representative's entry into this Agreement, the Senior Priority Class Debt Parties in respect of such Senior Priority Class Debt will be subject to and bound by the provisions of the First Lien/Second Lien Intercreditor Agreement as Senior Priority Secured Parties.

SECTION 3. This Representative Supplement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Representative Supplement shall become effective when the Designated Senior Representative shall have received a counterpart of this Representative Supplement that bears the signature

of the New Representative. Delivery of an executed signature page to this Representative Supplement by facsimile transmission or other electronic method shall be effective as delivery of a manually signed counterpart of this Representative Supplement.

SECTION 4. Except as expressly supplemented hereby, the First Lien/Second Lien Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS REPRESENTATIVE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Representative Supplement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the First Lien/Second Lien Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the First Lien/Second Lien Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to it at the address set forth below its signature hereto.

[*SIGNATURE PAGES FOLLOW*]

ANNEX IV

IN WITNESS WHEREOF, the New Representative has duly executed this Representative Supplement to the First Lien/Second Lien Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE],
as [ ] for the holders of [ ],

By: _____
Name:
Title:

Address for notices:

_____

attention of: _____

Telecopy: _____

ANNEX IV

Acknowledged by:

[ ]

By: _____
Name:
Title:

[ ]

By: _____
Name:
Title:

Issuer

ACCELERATE DIAGNOSTICS, INC.

By: _____
Name:
Title:

ANNEX IV

Exhibit 10.3

Execution Version

SUPER-PRIORITY SECURITY AGREEMENT

among

ACCELERATE DIAGNOSTICS, INC.,
as Issuer,

and

THE GUARANTORS PARTY HERETO FROM TIME TO TIME,
as Guarantors

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Collateral Agent

Dated as of August 8, 2024

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Exhibit 2 Form of Copyright Security Agreement
Exhibit 3 Form of Patent Security Agreement
Exhibit 4 Form of Trademark Security Agreement

SUPER-PRIORITY SECURITY AGREEMENT

This SUPER-PRIORITY SECURITY AGREEMENT, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, including by one or more Joinder Agreements, or otherwise, this "**Agreement**"), is made by and among Accelerate Diagnostics, Inc., a Delaware corporation ("**Issuer**"), and the Subsidiaries of Issuer from time to time party hereto as guarantors (collectively, the "**Guarantors**"), as pledgors, assignors and debtors (Issuer, together with the Guarantors, in such capacities and together with any successors in such capacities, the "**Pledgors**," and each, a "**Pledgor**"), and U.S. Bank Trust Company, National Association, a national banking association, solely in its capacity as collateral agent pursuant to the Indenture, (in such capacity, and together with any successors in such capacity, the "**Collateral Agent**").

R E C I T A L S:

A. In connection with the execution and delivery of this Agreement, Issuer, U.S. Bank Trust Company, National Association, as trustee and the Collateral Agent, and the other parties party thereto have entered into that certain Indenture, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**").

B. The Pledgors will receive substantial direct and/or indirect benefits from the execution and delivery of the Indenture and the other Notes Documents and are, therefore, willing to enter into this Agreement.

C. This Agreement is made by and among the Pledgors and the Collateral Agent to grant a Lien on the Pledged Collateral to the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance of all of the Notes Obligations.

D. It is a condition to the issuance of the Notes that Issuer executes and delivers the applicable Notes Documents, including this Agreement.

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Collateral Agent hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. (a) Unless otherwise defined herein or in the Indenture, capitalized terms used herein that are defined in the UCC (as defined below) shall have the meanings assigned to them in the UCC.

(b) Terms used (including in the preamble and recitals hereto) but not otherwise defined herein that are defined in the Indenture shall have the meanings given to them in the Indenture.

(c) The following terms shall have the following meanings:

"**Agreement**" shall have the meaning assigned to such term in the preamble hereof.

"**Blocked Account**" shall mean, collectively, the Existing Blocked Accounts and the New Blocked Accounts.

"**CFC**" shall mean a "controlled foreign corporation" within the meaning of section 957(a) of the Code.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Collateral Agent**" shall have the meaning assigned to such term in the preamble hereof.

"**Control**" means with respect to any asset, right or property with respect to which a security interest therein is perfected by a Secured Party's having "control" thereof (whether pursuant to the terms of an agreement or through the existence of certain facts and circumstances), that the intended Secured Party has "control" of such asset, right, or property as contemplated in the UCC.

"Control Agreement" shall have the meaning assigned to such term in Section 2.3(a).

"**Copyright Security Agreement**" shall mean an agreement substantially in the form annexed hereto as Exhibit 2.

"**Copyrights**" shall mean, collectively (a) all copyrights, whether registered or unregistered, and whether published or unpublished, held pursuant to the laws of the United States, any State thereof or any other country, multi-national registry, or any political subdivision thereof; (b) registrations, applications, recordings and proceedings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country, including the copyright registrations and applications listed in Schedule 5; (c) any continuations, renewals or extensions thereof; (d) any registrations to be issued in any pending applications, and shall include any right or interest in and to work protectable by any of the foregoing which are presently or in the future owned, created or authorized (as a work for hire for the benefit of any Pledgor) or acquired by any Pledgor, in whole or in part; (e) prior versions of works covered by copyright and all works based upon, derived from or incorporating such works; (f) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to copyrights, including, without limitation, damages, claims and recoveries for past, present or future infringement; (g) rights to sue for past, present and future infringements of any copyright; and (h) any other rights corresponding to any of the foregoing rights throughout the world.

"**Deliverable Intercompany Notes**" shall mean, with respect to each Pledgor, all Pledged Intercompany Notes owed to such Pledgor, other than (i) any Pledged Intercompany Note that is in an aggregate principal amount of less than $2,000,000 or (ii) any Pledged Intercompany Note owed by another Pledgor.

"**Distributions**" shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Pledged Intercompany Notes.

"**Excluded Account**" shall mean, collectively, (i) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Pledgors' employees, (ii) tax accounts, including, without limitation, sales tax accounts, (iii) escrow accounts, (iv) fiduciary or trust accounts, (v) zero balance accounts that sweep on a daily basis to a Blocked Account, (vi) collateral accounts pledged to secure performance (including to secure letters of credit and bank guarantees), (vii) any other Deposit Accounts only for so long as the amounts of deposit therein do not exceed $50,000 in the aggregate and (viii) any benefits investment accounts for the benefit of Pledgors' employees.

"**Excluded Assets**" shall mean (A) any fee-owned real property located outside the United States and any leasehold interest in real property located outside the United States, (B) all motor vehicles and other assets covered by a certificate of title (except to the extent a security interest therein can be perfected by the filing of a UCC financing statement or the equivalent under other applicable law), (C) any lease, license or agreement or any property subject to a purchase money security interest or capital lease, in each case, to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or capital lease arrangement or create a right of termination in favor of any other party thereto (other than any Pledgor) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition, (D) any Property where the cost of obtaining a security interest in, or perfection of, such assets exceeds the practical benefit to the Holders afforded thereby as reasonably determined by Issuer and notified to the Collateral Agent in writing, (E) any intent-to-use application for registration of a Trademark prior to the filing of a "**Statement of Use**" or an "**Amendment to Allege Use**" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application or any registration issuing therefrom under applicable federal law, (F) solely to the extent that the pledge thereof would result in material adverse tax consequences to the Issuer, the voting Capital Stock of any Foreign Subsidiary or FSHCO in excess of 65% of each class of outstanding voting Capital Stock of such Foreign Subsidiary or FSHCO, (G) Excluded Accounts described in clause (i) through (iv), (vi) (solely to the extent that a grant of a security interest therein would violate or invalidate such pledge arrangement or create a right of termination in favor of any other party thereto (other than any Pledgor) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law) and (viii), of the definition thereof and (H) any assets the grant of a security interest in which would be prohibited by applicable law but only, in each case, to the extent, and only for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, any other laws (including bankruptcy, insolvency or similar laws), or principles of equity, and, to the extent severable, shall attach immediately to any portion of such assets that do not result in such prohibition; *provided* that immediately upon the ineffectiveness, lapse or termination of any such prohibition, the Collateral shall include, and such Pledgor shall be deemed to have granted a security interest in, such assets as if such provision had never been in effect; *provided*, *further*, that any asset constituting collateral with respect to any Permitted Indebtedness (other than capital leases) shall not be an Excluded Asset.

"**Existing Blocked Account**" shall have the meaning assigned to such term in Section 2.3(a).

"**FSHCO**" shall mean any Subsidiary substantially all of the assets of which (directly or through one or more disregarded entities for U.S. federal income tax purposes) consist of shares of Capital Stock (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs.

"**Guarantors**" shall have the meaning assigned to such term in the preamble hereof.

"**Indenture**" shall have the meaning assigned to such term in the recitals hereof.

"**Intellectual Property**" shall mean, collectively, all domestic, foreign and multi-national intellectual property rights of any kind, whether now or hereafter existing, including, without limitation, all Patents, Trademarks, Copyrights and Trade Secrets, together with any and all (i) rights and privileges arising under applicable law with respect to the use of any of the foregoing, (ii) rights to proceeds, income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements, misappropriations, dilutions or other violations thereof, (iii) rights to sue or otherwise recover for past, present and future infringements, misappropriations, dilutions or other violations thereof and (iv) rights corresponding thereto throughout the world.

"**Intellectual Property Collateral**" shall mean, with respect to each Pledgor, all Intellectual Property of such Pledgor (including rights under Licenses), whether now owned or held, or hereafter acquired or created by or assigned to such Pledgor; *provided*, that notwithstanding any of the foregoing, Intellectual Property Collateral shall not include any Excluded Assets.

"**Issuer**" shall have the meaning assigned to such term in the preamble hereof.

"**Joinder Agreement**" shall mean an agreement substantially in the form annexed hereto as Exhibit 1.

"**Licenses**" shall mean all licenses, covenants not to sue and any other agreement granting any right with respect to any Intellectual Property (whether a Pledgor is the grantor or grantee thereunder).

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the business affairs, operations or results of operations, or condition (financial or otherwise) of Issuer and its Subsidiaries, taken as a whole, (b) the ability of the Issuer to perform its payment obligations under the Notes Documents or (c) the rights and remedies of the Collateral Agent and the other Notes Secured Parties (as defined in the Indenture) under the Indenture or the other Notes Documents, taken as a whole.

"**Material IP Collateral**" shall mean any Intellectual Property Collateral that is material to the business of Issuer and its Subsidiaries, taken as a whole.

"**New Blocked Account**" shall have the meaning assigned to such term in Section 2.3(b).

"**Order**" shall mean any judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction.

"**Organization Documents**" mean, collectively, with respect to any Person, (a) in the case of any corporation, the certificate of incorporation and by-laws (or similar constitutive documents) of such Person, (b) in the case of any limited liability company, the certificate of formation and operating agreement (or similar constitutive documents) of such Person, (c) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person, (d) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person and (e) in any other case, the functional equivalent of the foregoing.

"**Patent Security Agreement**" shall mean an agreement substantially in the form annexed hereto as Exhibit 3.

"**Patents**" shall mean, collectively, all patents and all patent registrations and applications issued or applied for in the United States or any other country, multi-national registry, or any political subdivision thereof, including those listed in Schedule 5, together with any and all (i) inventions and improvements described and claimed therein, (ii) reissues, substitutions, reexaminations, divisions, renewals, extensions, continuations and continuations-in-part thereof and amendments thereto, (iii) all petty patents, divisionals and patents of addition, (iv) all patents to issue in any such applications, (v) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to patents, including, without limitation, damages, claims and recoveries for past, present or future infringement, and (vi) rights to sue for past, present and future infringements of any patent.

"**Pledged Collateral**" shall have the meaning assigned to such term in Section 2.1.

"**Pledged Debt**" shall have the meaning assigned to such term in Section 3.4(a).

"**Pledged Intercompany Notes**" shall mean, with respect to each Pledgor, all intercompany promissory notes owned by such Pledgor evidencing Indebtedness for borrowed money and all Instruments evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent not prohibited pursuant to the terms hereof and under the Indenture; *provided*, that notwithstanding any of the foregoing, Pledged Intercompany Notes shall not include any Excluded Assets.

"**Pledged Interests**" shall mean, collectively, with respect to each Pledgor, (i) all membership, partnership or other Capital Stock (other than in a corporation), as applicable, now or hereafter owned by such Pledgor at any time including without limitation, those of each issuer described in Schedule 4 hereto, together with all rights, privileges, authority and powers of such Pledgor in and to each such issuer or under any Organization Document of each such issuer and (ii) the certificates, instruments and agreements representing such membership, partnership or other interests and any and all interest of such Pledgor in the entries on the books of any securities intermediary pertaining to such membership, partnership or other Capital Stock; *provided*, that notwithstanding any of the foregoing, Pledged Interests shall not include any Excluded Assets.

"**Pledged Securities**" shall mean, collectively, the Pledged Interests and the Pledged Shares; *provided*, that notwithstanding any of the foregoing, Pledged Securities shall not include any Excluded Assets.

"**Pledged Shares**" shall mean, collectively, with respect to each Pledgor, (i) the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, now or hereafter owned by such Pledgor at any time, together with all rights, privileges, authority and powers of such Pledgor relating to such interests in each such issuer or under any Organization Document of each such issuer and (ii) the certificates, instruments and agreements representing such shares of Capital Stock and any and all interest of such Pledgor in the entries on the books of the issuer of such shares or of any financial intermediary pertaining to the Pledged Shares; *provided*, that notwithstanding any of the foregoing, Pledged Shares shall not include any Excluded Assets.

"**Pledgor**" shall have the meaning assigned to such term in the preamble hereof.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Secured Parties**" shall mean the Collateral Agent, the Trustee and the Holders of Notes.

"**Securities Collateral**" shall mean, collectively, the Pledged Securities, the Pledged Intercompany Notes and the Distributions; *provided*, that notwithstanding any of the foregoing, Securities Collateral shall not include any Excluded Assets.

"**Trade Secrets**" shall mean, collectively, all trade secrets and all other confidential or proprietary information and know-how, whether or not reduced to a writing or other tangible form.

"**Trademark Security Agreement**" shall mean an agreement substantially in the form annexed hereto as Exhibit 4.

"**Trademarks**" shall mean, collectively, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URLs), domain names, corporate names, trade names, or other indicia of source, whether registered or unregistered, and all registrations and applications for the foregoing (whether statutory or common law and whether registered or applied for in the United States or any other country, multi-national registry, or any political subdivision thereof), including those trademark and service mark registrations and applications listed in Schedule 5 together with any and all (i) goodwill of the business connected with the use thereof and symbolized thereby, (ii) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages, claims and recoveries for past, present or future infringement, (iii) rights to sue for past, present and future infringements thereof and (iv) extensions and renewals thereof and amendments thereto.

"**UCC**" shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; *provided, however*, that if by reason of mandatory provisions of applicable law, any or all of the attachment, perfection or priority of the Collateral Agent's and the other Secured Parties' security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code in a jurisdiction other than the State of New York, the term "**UCC**" shall mean the Uniform Commercial Code as in effect on the date hereof in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions.

"**Uncertificated Security**" shall have the meaning assigned to such term in Section 3.2.

"**USCO**" means the United States Copyright Office.

"**USPTO**" means the United States Patent and Trademark Office.

SECTION 1.2 Interpretation. The interpretive provisions specified in the Indenture shall be applicable to this Agreement. No failure on the part of the Collateral Agent to provide any Pledgor with any notice expressly required hereunder in connection with the exercise of any right, power or remedy hereunder shall impair the validity of exercise of such right, power or remedy.

SECTION 1.3 Resolution of Drafting Ambiguities. Each Pledgor acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., the Collateral Agent) shall not be employed in the interpretation hereof.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Security Interest. As collateral security for the payment and performance in full of all the Notes Obligations, each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties, a first priority Lien on and security interest in (subject, as to priority, to senior Liens expressly permitted by the Indenture) and to all of the right, title and interest of such Pledgor in, to and under the following Property, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, giving effect to clause (a) of the proviso in this Section 2.1, the "**Pledged Collateral**"):

(i) all Accounts;

(ii) all Equipment, Goods, Inventory and Fixtures;

(iii) all Documents, Instruments and Chattel Paper;

(iv) all Letter-of-Credit Rights;

(v) all Securities Collateral;

(vi) all Investment Property and Deposit Accounts;

(vii) all Intellectual Property Collateral;

(viii) the Commercial Tort Claims described on Schedule 1 hereto (as such Schedule may be supplemented from time to time pursuant to Section 3.4(f));

(ix) all General Intangibles;

(x) all Money;

(xi) all Supporting Obligations;

(xii) all books and records pertaining to any and/or all of the foregoing;

(xiii) to the extent not covered by clauses (i) through (xii) of this sentence, choses in action of such Pledgor, whether tangible or intangible; and

(xiv) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (i) through (xiv) above or any other provision of this Agreement or any other Notes Document:

(a) the security interest created by this Agreement shall not extend to, and the term "Pledged Collateral" and "Intellectual Property Collateral" shall not include, any Excluded Assets;

(b) no Pledgor shall be required to take any action with respect to perfection by "control" (within the meaning of the UCC), other than in respect of (A) Pledged Securities (to the extent such Pledged Securities can be perfected by control), (B) Pledged Debt to the extent required to be delivered to the Collateral Agent hereunder, (C) any Deposit Accounts, Securities Accounts or Commodity Accounts pursuant to Section 2.3 and (D) any actions taken with respect to perfection by "control" under any Permitted Indebtedness (other than capital leases);

(c) no Pledgor shall be required to perfect the security interests granted by this Agreement by any means other than by (A) filings pursuant to the UCC in the office of the secretary of state (or similar central filing office) or local filing office, as applicable, of the relevant state(s), (B) filing and recording fully executed agreements substantially in the forms set forth in Exhibits 2, 3, and 4 hereto in the USPTO or in the USCO, as applicable, (C) the Collateral Agent obtaining "control" (within the meaning of the UCC) of Pledged Securities, Pledged Debt and any accounts pursuant to Section 2.3 to the extent expressly required elsewhere herein, (D) other methods expressly provided herein or (E) any actions taken with respect to any Permitted Indebtedness (other than capital leases); and

(d) except to the extent delivered under any Permitted Indebtedness, no Pledgor shall be required to deliver any leasehold mortgage, landlord consent or estoppel, collateral access agreement or bailee letters with regards to any leased Real Property.

Notwithstanding anything to the contrary contained herein, immediately upon any Property of a Pledgor ceasing to constitute Excluded Assets, the Pledged Collateral shall include, and the Issuer and the other Pledgors, as applicable, shall be deemed to have granted a security interest in, such Property.

SECTION 2.2 Filings.

(a) Each Pledgor hereby irrevocably authorizes the Collateral Agent (or its designee) at any time and from time to time prior to the termination of this Agreement pursuant to Section 10.3 to file (but the Collateral Agent shall have no duty to file) in any relevant jurisdiction any financing statements (including fixture filings), continuation statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement, continuation statement or amendment thereto relating to the Pledged Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor and (ii) in the case of a financing statement filed as a fixture filing or covering Pledged Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the Real Property to which such Pledged Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon reasonable request and, upon reasonable request by a Pledgor, the Collateral Agent agrees to use commercially reasonable efforts to make available to such Pledgor copies of any such filings. Such financing statements may describe the collateral in the same manner as described herein or may contain a description of collateral that describes such Property in any other manner as the Collateral Agent may determine, in its reasonable discretion, is necessary or advisable to ensure the perfection of the security interest in the collateral granted to the Collateral Agent in connection herewith, including, describing such Property as "all assets whether now owned or hereafter acquired and all proceeds thereof" or "all personal property whether now owned or hereafter acquired and all proceeds thereof" or words of similar meaning (regardless of whether any particular asset comprised in the Pledged Collateral falls within the scope of Article 9 of the UCC).

(b) Each Pledgor hereby further authorizes the Collateral Agent (or its designee) to file (but the Collateral Agent shall have no duty to file) instruments with the USPTO or the USCO (or any successor office), including Copyright Security Agreements, Patent Security Agreements and Trademark Security Agreements, or other documents that are necessary for the purpose of

perfecting, confirming, continuing, enforcing or protecting the pledge and security interest granted by such Pledgor hereunder in (i) any Intellectual Property Collateral owned by Pledgor and applied for, registered or issued in the United States and (ii) any Exclusive Copyright Licenses, in each case naming such Pledgor, as debtor, and the Collateral Agent, as secured party.

(c) Subject to the other terms, limitations and conditions set forth in this Agreement and the other Notes Documents, notwithstanding the grant of authority to the Collateral Agent under this section, the Pledgors shall file or cause to be filed any and all financing statements, continuation statements, amendments, instruments with the USPTO or the USCO (or any successor office), and other documents and agreements as may be reasonably necessary (as determined by the Issuer in good faith) to perfect and maintain the perfection of the Collateral Agent's security interest over the Pledged Collateral.

SECTION 2.3 Control Agreements.

(a) As of the date hereof, no Pledgor has any Deposit Accounts, Securities Accounts or Commodity Accounts other than the accounts listed on Schedule 6. For all Deposit Accounts, Securities Accounts and Commodity Accounts maintained by the Issuer as of the date hereof (other than Excluded Accounts), collectively, the "**Existing Blocked Accounts**"), the Issuer shall ensure that the Collateral Agent has control (within the meaning of the UCC) within 60 days after the date of this Agreement with respect to any such Existing Blocked Account of the Issuer by causing the institution maintaining such Existing Blocked Account to enter into a control agreement with the Collateral Agent ("**Control Agreement**"), pursuant to which the applicable institution shall agree to comply with the Collateral Agent's instructions with respect to disposition of funds in such Existing Blocked Account without further consent by the Issuer or agree to comply with the Collateral Agent's instructions or entitlement orders with respect to such Securities Account without further consent by the Issuer, as applicable. If any institution with which an Existing Blocked Account is maintained refuses to, or does not, enter into a Control Agreement in response to reasonable comments from the Collateral Agent (it being agreed by all parties that any comments related to ensuring that the Collateral Agent is not exposed to individual liability are reasonable), then the Issuer shall promptly (and in any event within 90 days after notice from the Collateral Agent) close the applicable Existing Blocked Account, transfer all balances therein to another Blocked Account meeting the requirements of this Section 2.3, and, if practicable, prior to such transfer, cause the institution maintaining such account to enter into a Control Agreement in compliance with this Section 2.3(a); *provided* that, to the extent it is not practicable for the Issuer to cause the institution maintaining such account to enter into a Control Agreement prior to such transfer, Section 2.3(b)(i) shall not apply to the new Blocked Account being opened and within 90 days of opening such account, the Issuer shall ensure that the Collateral Agent has control (within the meaning of the UCC) with respect to such account. Notwithstanding anything else contained herein, no institution shall be required to subordinate its security interest in a Deposit Account, Securities Account, or Commodity Account.

(b) Within 90 days of (i) any Person becoming a Pledgor or (ii) any Pledgor acquiring or opening any Deposit Account, Securities Account or Commodity Account (other than the Excluded Accounts) (any accounts under the foregoing clauses (i) and(ii), collectively, the "**New Blocked Accounts**"), the applicable Pledgor shall ensure that the Collateral Agent has Control with respect to any New Blocked Account of such Pledgor by causing the institution maintaining such account, within 90 days after the date of such Person becoming a Pledgor or the opening of such New Blocked Account, as applicable, to enter into a Control Agreement with the Collateral Agent pursuant to which the applicable institution shall agree to comply with the Collateral Agent's instructions with respect to disposition of funds in such Blocked Account without further consent by such Pledgor or agree to comply with the Collateral Agent's Entitlement Orders with respect to such Securities Account without further consent by such Pledgor, as applicable. If any institution with which a New Blocked Account is maintained refuses to, or does not, enter into a Control Agreement in response to reasonable comments from the Collateral Agent (it being agreed by all parties that any comments related to ensuring that the Collateral Agent is not exposed to individual liability are reasonable), then the respective Pledgor shall promptly (and in any event within 90 days after notice from the Collateral Agent) close the appliable New Blocked Account, transfer all balances therein to another Blocked Account meeting the requirements of this Section 2.3, and, if practicable, prior to such transfer, cause the institution maintaining such account to enter into a Control Agreement in compliance with this Section 2.3(b)(ii); *provided* that, to the extent it is not practicable for such Pledgor to cause the institution maintaining such account to enter into a Control Agreement prior to such transfer, Section 2.3(b)(i) shall not apply to the New Blocked Account being opened and within 90 days of opening such account, such Pledgor shall ensure that the Collateral Agent has control (within the meaning of the UCC) with respect to such account.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF PLEDGED COLLATERAL

SECTION 3.1 Delivery of Certificated Securities Collateral. Each Pledgor represents and warrants that as of the date hereof, Schedule 3 hereto sets forth the office of the secretary of state (or similar central filing office) of the relevant state(s) in which a filing pursuant to the UCC would perfect the security interests granted by this Agreement with respect to the Pledged Collateral (solely to the extent such security interests in the Pledged Collateral can be perfected by such filing). Each Pledgor represents and warrants that as of the date hereof, Schedule 4 hereto sets forth all Pledged Securities of such Pledgor. Each Pledgor represents and warrants that (i) all certificates or instruments representing or evidencing any Pledged Securities and (ii) the Deliverable Intercompany Notes, in each case, in existence on the date hereof, will be delivered to the Collateral Agent (or its designee) in suitable form for transfer by delivery and accompanied by duly executed instruments of transfer or assignment in blank and that, upon such delivery, the Collateral Agent will have a valid and perfected first priority security interest therein (subject, as to priority, to senior Liens expressly permitted by the Indenture) within 60 days of the date hereof. Each Pledgor hereby agrees that (i) all certificates or instruments representing or evidencing any Pledged Securities and (ii) the Deliverable Intercompany Notes, in each case, acquired by such Pledgor after the date hereof shall, within 60 days after receipt thereof by such Pledgor, be delivered to the Collateral Agent (or its designee) pursuant hereto and shall be in suitable form for transfer by delivery and shall be accompanied by duly executed instruments of transfer or assignment in blank. Each delivery of Pledged Securities and Deliverable Intercompany Notes shall be accompanied by a schedule describing such Pledged Securities and Deliverable Intercompany Notes, which schedule shall be deemed to supplement Schedule 4 and Schedule 7 and made a part thereof; *provided* that failure to supplement Schedule 4 and Schedule 7 shall not affect the validity of such pledge of such Pledged Securities or Deliverable Intercompany Notes. Each schedule so delivered shall supplement, or amend and restate, as applicable, any prior schedules so delivered.

The Collateral Agent shall have the right (but not the obligation), at any time upon the occurrence and during the continuance of any Event of Default, upon prior written notice to Issuer, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of such Pledged Securities or Deliverable Intercompany Notes, without any indication that such Pledged Securities or Deliverable Intercompany Notes are subject to the security interest hereunder; *provided*, *however*, notwithstanding anything contained herein to the contrary, immediately upon the cure or waiver of any applicable Events of Default, the Collateral Agent shall promptly endorse, assign or otherwise transfer to or register in the name of the applicable Pledgor any such Pledged Securities or Deliverable Intercompany Notes (subject to revesting in the event of a subsequent Event of Default that is continuing and upon prior written notice from the Collateral Agent to Issuer, *provided*, that such Pledged Securities or Deliverable Intercompany Notes remain in the possession of the Collateral Agent at such time). In addition, the Collateral Agent shall have the right (but not the obligation) at any time upon the occurrence and during the continuance of any Event of Default to exchange certificates or Instruments representing or evidencing any Pledged Securities or Deliverable Intercompany Notes for certificates or Instruments of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 3.2 Perfection of Other Securities Collateral. Each Pledgor represents and warrants that, subject to the provisions of Section 4.2, upon the filing of UCC financing statements in the jurisdictions indicated on Schedule 3, the Collateral Agent has a valid and perfected first priority security interest (subject, as to priority, to senior Liens expressly permitted by the Indenture) under applicable U.S. federal or state law in all Pledged Securities not represented by a certificated interest ("**Uncertificated Security**") pledged by it hereunder that are in existence on the date hereof, to the extent such security interest can be perfected by the filing of an appropriate UCC financing statement. Pledged Interests shall either (i) be represented by a certificate, and in the organizational documents of such entity, the applicable Pledgor shall cause the issuer of such interests (or use commercially reasonable efforts to cause the issuer if such issuer is not an Affiliate of such Pledgor), to elect to treat such interests as a "security" within the meaning of Article 8 of the UCC of its jurisdiction of organization or formation, as applicable, by including in its organizational documents language that such interests shall be a "security" (within the meaning of Article 8 of the UCC) governed by Article 8 of the UCC, or (ii) not be represented by a certificate and the applicable Pledgor shall cause the issuer of such interests not to have elected to treat such interests as a "security" within the meaning of Article 8 of the UCC.

If any of the Pledged Securities is or shall become evidenced or represented by an Uncertificated Security, such Pledgor shall cause the issuer thereof (or use commercially reasonable efforts to cause if the issuer is not an Affiliate of such Pledgor) either (i) to

register the Collateral Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer, or (ii) to agree in writing with such Pledgor and the Collateral Agent that such issuer will comply with instructions with respect to such Uncertificated Security originated by the Collateral Agent without further consent of such Pledgor.

SECTION 3.3 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Pledgor agrees that at the sole reasonable cost and expense of the Pledgors (i) such Pledgor shall furnish to the Collateral Agent from time to time information further identifying and describing the Pledged Securities and Pledged Debt as the Collateral Agent may reasonably request, all in reasonable detail, and (ii) at any time and from time to time, such Pledgor shall promptly and duly execute and deliver, and cause to be filed and recorded, such further instruments and documents and take such further action as is reasonably necessary or as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the rights and powers herein granted, including (x) the filing of any financing statements and amendments thereto, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in the United States or any of its States with respect to the security interest created hereby and (y) the execution and delivery of Patent Security Agreements, Copyright Security Agreements, and Trademark Security Agreements.

SECTION 3.4 Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Pledged Collateral, each Pledgor (i) represents and warrants and/or (ii) covenants, at such Pledgor's own expense, to take the following actions, in each case with respect to the following Pledged Collateral:

(a) Instruments and Tangible Chattel Paper. As of the date hereof, each Pledgor hereby represents and warrants that (i) no amounts individually in excess of $2,000,000 payable to such Pledgor under or in connection with any of the Pledged Collateral (other than amounts owed by another Pledgor) are evidenced by any Instrument (other than checks to be deposited in the ordinary course of business) or Tangible Chattel Paper (other than documents or records evidencing amounts owed by customers in the ordinary course of business pursuant to deferred payment procedures) other than the Deliverable Intercompany Notes and the Instruments and Tangible Chattel Paper listed in Schedule 7 and (ii) each such Deliverable Intercompany Note, Instrument and each such item of Tangible Chattel Paper individually in excess of $2,000,000 (other than checks to be deposited in the ordinary course of business) has been or will be properly endorsed and delivered to the Collateral Agent (or its designee) within 60 days after the date hereof, accompanied by instruments of transfer or assignment duly executed in blank. If any amount, individually, in excess of $2,000,000 then payable under or in connection with any of the Pledged Collateral (other than any amount owed by any Pledgor) shall be evidenced by any Instrument (other than checks to be deposited in the ordinary course of business) or Tangible Chattel Paper (other than documents or records evidencing amounts owed by customers in the ordinary course of business pursuant to deferred payment procedures) (such Instruments and Tangible Chattel Paper, collectively, together with the Deliverable Intercompany Notes, the "**Pledged Debt**") and has not previously been delivered to the Collateral Agent, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall promptly (and in any event within 60 days after acquisition by such Pledgor) endorse, assign and deliver the same to the Collateral Agent (or its designee), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify; *provided, however*, that so long as no Event of Default has occurred and is continuing, upon written request by such Pledgor, the Collateral Agent (or its designee) shall promptly (and in any event within 10 Business Days) return such Instrument or Tangible Chattel Paper to such Pledgor from time to time, to the extent necessary for collection or cancellation thereof in the ordinary course of such Pledgor's business.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) Letter-of-Credit Rights. As of the date hereof, no Pledgor is the beneficiary or assignee under any letter of credit, other than those listed on Schedule 2 hereto. The parties hereto acknowledge and agree that under no circumstances shall any Pledgor hereunder be under any obligation to take any perfection steps (other than the filing of appropriate financing statements under the UCC) with respect to any security interest granted in any letter of credit under which any Pledgor is a beneficiary having a value reasonably believed by the Pledgors to be, individually, less than $2,000,000. If any Pledgor shall become the beneficiary or assignee under any letter of credit with a value, individually, in excess of $2,000,000 that is not a Supporting Obligation with respect to any of the Pledged Collateral, such Pledgor shall either (i) use commercially reasonable efforts to arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under such letter of credit or (ii) use commercially reasonable efforts to arrange for the Collateral Agent to become the transferee beneficiary of such letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under such letter of credit are to be paid to the applicable Pledgor unless an Event of Default has occurred and is continuing.

(f) Commercial Tort Claims. As of the date hereof, each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims having a value reasonably believed by the Pledgors to be, individually, in excess of $2,000,000 for which such Pledgor has filed a complaint in a court of competent jurisdiction, other than those listed on Schedule 1 hereto. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim having a value reasonably believed by the Pledgors to be, individually, in excess of $2,000,000, such Pledgor shall promptly (and in any event within 30 days of acquiring such Commercial Tort Claim or such later date as may be agreed to in writing by the Collateral Agent) notify the Collateral Agent in a writing signed by such Pledgor of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement. Unless otherwise agreed, the grant of a security interest in any such Commercial Tort Claim shall not prejudice the right of such Pledgor to prosecute, enforce or exercise any of its rights in connection with such Commercial Tort Claim, which it will continue to enjoy until an Event of Default has occurred and is continuing.

SECTION 3.5 Joinder of Additional Guarantors. The Pledgors shall cause each Subsidiary of Issuer that, from time to time, after the date hereof shall be required to become a Guarantor for the benefit of the Secured Parties pursuant to Section 10.20 of the Indenture, to execute and deliver to the Collateral Agent a Joinder Agreement within 60 days after the date on which it was acquired or created and, upon such execution and delivery, such Subsidiary shall constitute a "Guarantor" and a "Pledgor" for all purposes under the Indenture and hereunder with the same force and effect as if originally named as a Guarantor and Pledgor therein and herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Pledgor as a party to this Agreement or any other Notes Document.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1 Title; Consent.

(a) Except for the security interest granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement, such Pledgor owns (or, in the case of the Intellectual Property Collateral, either owns or has a License to) and, as to Pledged Collateral acquired by it from time to time after the date hereof, will either own or hold a License to the rights in each item of Pledged Collateral pledged by it hereunder free and clear of any and all Liens of others, except (i) for those failures to own or have a License which could not reasonably be expected to result in a Material Adverse Effect and (ii) as otherwise permitted by the Notes Documents. As of the date hereof, there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or Property that is convertible into, or that requires the issuance or sale of, any Pledged Securities that constitute Capital Stock (in each case, other than to any Pledgor). No person other than the Collateral Agent (or (i) its bailee for such purpose or (ii) the Pledgor that owns such Pledged Securities, Pledged Debt or Deposit Account, as applicable) has, or will have, control or possession of all or any part of the Pledged Securities, Pledged Debt or Deposit Account, except as expressly permitted by the Notes Documents.

(b) Other than as required by (i) foreign laws with respect to the Capital Stock in any Foreign Subsidiary and (ii) laws affecting the offering and sale of securities generally, no consent of any Person, including any general or limited partner, any other member or manager of a limited liability company, any shareholder or any other trust beneficiary, is necessary (from the perspective of a secured party) in connection with the creation, perfection or first priority status (or the maintenance thereof) of the security interest of the Collateral Agent in any Capital Stock pledged to the Collateral Agent under this Agreement and the other Collateral Documents or the exercise by the Collateral Agent of any remedies in respect of any Pledged Securities, except in each case as have already been obtained.

SECTION 4.2 Validity of Security Interest.

(a) The security interest in, and Lien on, the Pledged Collateral granted to the Collateral Agent for the ratable benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in all the Pledged Collateral securing the payment and performance of the Notes Obligations, and (b) upon completion of the perfection steps set forth below, a perfected first priority security interest (subject, as to priority, to senior Liens expressly permitted by the Indenture) in all the Pledged Collateral with respect to which a lien may be perfected by (i) filing a financing statement pursuant to the UCC in the office of the secretary of state (or similar central filing office) or local filing office, as applicable, of the relevant State(s), (ii) possession or Control by the Collateral Agent (or its bailee for such purpose and subject to the time periods provided in Sections 2.3 and Article 3 of this Agreement) or (iii) filing Patent Security Agreements, Copyright Security Agreements and Trademark Security Agreements with the USPTO or USCO, as applicable.

(b) Notwithstanding anything to the contrary in any of the Notes Documents, no Pledgor shall be required to take any actions nor shall be deemed to make any representation, in each case under any Collateral Document with respect to any requirements of foreign laws that may affect the validity or perfection of any security interest purported to be granted under any Collateral Document.

SECTION 4.3 Defense of Claims. Each Pledgor shall, at its own cost and expense, take any and all commercially reasonable actions necessary to or as are reasonably requested by the Collateral Agent (at the direction of the Trustee or Holders of a majority of the aggregate principal amount of the Notes given in accordance with the Indenture) to defend title to the Pledged Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Collateral Agent and the priority thereof against all material claims and demands of all persons at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party, in each case except as permitted by the Indenture. Each Pledgor shall promptly notify the Collateral Agent of any claims or demands of the type described in the foregoing sentence.

SECTION 4.4 Other Financing Statements. No Pledgor has filed, nor authorized any third party to file, any valid or effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction of the United States or any of its States) covering or purporting to cover any interest of any kind in the Pledged Collateral, except such as have been filed in favor of the Collateral Agent pursuant to this Agreement or as permitted under the Indenture. Until the satisfaction and discharge of the Indenture in accordance with Section 4.01 thereof, no Pledgor shall execute, authorize or consent to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction of the United States or any of its States or territories) relating to any Pledged Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holder(s) of Indebtedness permitted under the Indenture.

SECTION 4.5 Chief Executive Office; Change of Name; Jurisdiction of Organization, etc. Such Pledgor shall give the Collateral Agent written notice within at least 10 Business Days of the occurrence of any change to its name, legal structure (whether by merger, consolidation, change in corporate form or otherwise), type of organization, jurisdiction of organization, organizational identification number if it has one (but solely to the extent such organizational identification number is required to be set forth on financing statements under the applicable UCC) or, in the case of any Pledgor that is not a Registered Organization, its sole place of business (or, if it has more than one place of business, its chief executive office). In such event, such Pledgor shall take all steps reasonably necessary (as determined by the Issuer in good faith) to maintain the Collateral Agent's valid and perfected security interest with the priority required hereunder in such Pledgor's property constituting Pledged Collateral. The Collateral Agent shall not be liable nor responsible to any party for any failure to maintain a valid and perfected security interest with the priority required hereunder in such Pledgor's property constituting Pledged Collateral. The Collateral Agent shall have no duty to inquire about such changes, the

parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Pledgor.

SECTION 4.6 Due Authorization and Issuance. All of the Pledged Shares have been duly authorized, validly issued and are fully paid and non-assessable (if applicable). All of the Pledged Interests have been fully paid for.

SECTION 4.7 Pledged Collateral. As of the date hereof, all information set forth in the schedules annexed hereto relating to the Pledged Collateral, is accurate and complete in all material respects. As of the date of delivery of any updated information to the schedules hereto expressly required under this Agreement, such information shall be accurate and complete in all material respects.

SECTION 4.8 Insurance. Each Pledgor will at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (i) shall be endorsed to the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee and/or additional insured) and (ii) if agreed by the insurer (which agreement the Company shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least 30 days' prior written notice thereof (or, with respect to non-payment of premiums, 10 days' prior written notice) by the respective insurer to the Collateral Agent; provided, that the requirements of this Section 4.8 shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, and (5) health, medical, dental and life insurance; and (y) self-insurance programs; provided further that endorsements required by this Section 4.8 shall not be required to be delivered until the date that is ten (10) Business Days after the date of this Agreement (or such later date as the Collateral Agent, acting at the direction of Holders of a majority of the aggregate principal amount of the Notes, agrees).

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1 Voting Rights; Distributions; etc.

(i) So long as no Event of Default shall have occurred and be continuing and subject to the provisions of Section 5.1(ii):

(A) each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes of this Agreement and the other Notes Documents; *provided*, *however*, that no Pledgor shall in any event exercise such rights in any manner that would be adverse in any material respect to the ability of the Collateral Agent to exercise rights and remedies hereunder after the occurrence and during the continuance of an Event of Default; and

(B) each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien granted hereunder, any and all Distributions; *provided, however*, that any and all such Distributions consisting of rights or interests in the form of certificated Pledged Securities or Pledged Intercompany Notes shall be subject to the requirements of Sections 3.1 and 3.2.

(ii) Upon the occurrence and during the continuance of any Event of Default upon prior written notice from the Collateral Agent to Issuer:

(A) all rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.1(i)(A) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right (but not the obligation) to exercise such voting and other

consensual rights (but if directed by the Trustee in accordance with the Indenture, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Pledgors to exercise such rights) until the applicable Event of Default is no longer continuing, at which time all such rights automatically shall revert to such Pledgor, and in which case the Collateral Agent's rights under this Section 5.1(ii)(A) shall cease to be effective, subject to revesting in the event of a subsequent Event of Default that is continuing and upon prior written notice from the Collateral Agent as set forth above; *provided* that the foregoing clause (A) shall not apply with respect to (and this clause (A) shall not be construed as a restriction of) any voting and or consensual rights such Pledgor is entitled to exercise in connection with the approval, payment and/or accrual of Distributions; and

(B) all rights of each Pledgor to receive Distributions that it would otherwise be authorized to receive and retain pursuant to Section 5.1(i)(B) without further action shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions until all Event of Defaults are no longer continuing, in which case the Collateral Agent's rights under this Section 5.1(ii)(B) shall cease to be effective, subject to revesting in the event of a subsequent Event of Default that is continuing and upon prior written notice from the Collateral Agent as set forth above.

(iii) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as may be reasonably necessary (as determined by the Issuer in good faith) or as the Collateral Agent may reasonably request in writing to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5.1(ii)(A) and to receive all Distributions which it may be entitled to receive under Section 5.1(ii)(B).

(iv) All Distributions that are received by any Pledgor contrary to the provisions of Section 5.1(ii)(B) shall be received in trust for the benefit of the Collateral Agent, shall be promptly (and in any event within three (3) Business Days) paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary or reasonably requested endorsement).

ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 6.1 Grant of License.

(a) For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Agreement, each Pledgor grants to the Collateral Agent an irrevocable (subject to termination under Section 10.3), nonexclusive license (exercisable without payment of royalty or other compensation to the Pledgors) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Pledgor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, to the extent that such non-exclusive license (a) does not violate the express terms of any agreement between a Pledgor and a third party governing the applicable Pledgor's use of such Intellectual Property, or gives such third party any right of acceleration, modification, termination or cancellation therein and (b) is not prohibited by any applicable law; *provided*, that such licenses to be granted hereunder with respect to Trademarks shall be subject to the maintenance of quality standards with respect to the goods and services on which such Trademarks are used sufficient to preserve the validity of such Trademarks. The use of such license by the Collateral Agent may only be exercised, at the option of the Collateral Agent, upon the occurrence and during the continuation of an Event of Default; *provided*, *further*, that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Pledgors notwithstanding any subsequent cure of an Event of Default.

SECTION 6.2 Scheduled Intellectual Property. Schedule 5 correctly sets forth all United States issued Patents, Patent applications, registered Trademarks and applications for registration thereto, and registered Copyrights, in each case, issued, applied-for or registered with the USPTO or USCO and owned by each Pledgor in its own name as of the date hereof and all Exclusive Copyright Licenses granted to such Grantor as of the date hereof. On and as of the date hereof, except as set forth in Schedule 5, collectively, the Pledgors own (a) all issued Patents and pending Patent applications issued by or filed at the USPTO listed in Schedule 5, (b) all registered Trademarks and Trademark applications registered by or filed at the USPTO listed in Schedule 5, (c) all registered Copyrights and Copyright applications pending at the USCO listed in Schedule 5 and (d) all Licenses granting to a Pledgor any exclusive right with

respect to any registered Copyright owned by a third party ("**Exclusive Copyright Licenses**") listed in Schedule 5, except, in each case, where the failure to own or possess the right to use, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except as set forth in Schedule 5, as of the date hereof, all such scheduled Intellectual Property Collateral (but excluding Exclusive Copyright Licenses) has not been abandoned and, to the knowledge of each Pledgor, is valid, subsisting and in full force and effect, except as could not reasonably be expected to result in a Material Adverse Effect.

SECTION 6.3 No Violations or Proceedings. To the knowledge of each Pledgor, there is no violation, misappropriation, dilution or infringement by others of any right of such Pledgor with respect to any Material IP Collateral, except where such violation, misappropriation, dilution or infringement, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Such Pledgor is not infringing upon, diluting, misappropriating or otherwise violating any Intellectual Property right of any other person, except where such infringement, misappropriation, dilution or violation, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 6.4 Protection of Collateral Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) maintain and protect the Material IP Collateral owned by such Pledgor, (ii) not permit to lapse or become abandoned any Material IP Collateral owned by such Pledgor, and (iii) during the continuance of an Event of Default, upon prior notice from the Collateral Agent to Issuer, (x) not enter into any settlement, covenant not to sue, or other agreement, in each case that would materially impair the validity or enforceability of any Material IP Collateral owned by such Pledgor, or materially impair such Pledgor's ownership of any Material IP Collateral owned by such Pledgor and (y) not permit to lapse or become abandoned any Material IP Collateral owned by such Pledgor; *provided*, that, except with respect to clause (iii) above, nothing in this Agreement shall prevent any Pledgor from disposing of, discontinuing the use or maintenance of, failing to pursue or otherwise allowing to lapse, terminate or put into the public domain, any of its Intellectual Property, to the extent Issuer determines in good faith that such Intellectual Property is not material to the business of Issuer and its Subsidiaries, taken as a whole. Upon the Collateral Agent's reasonable request, each Pledgor shall furnish to the Collateral Agent from time to time information further identifying and describing the Intellectual Property Collateral as the Collateral Agent may reasonably request, all in reasonable detail (it being understood that the Collateral Agent shall have no duty to make such request (other than pursuant to any direction given by the Trustee or the Holders of a majority of the aggregate principal amount of the Notes in accordance with the Indenture)).

SECTION 6.5 After-Acquired Property. If any Pledgor, at any time before the satisfaction and discharge of the Indenture in accordance with Section 4.01 thereof, (i) obtains any rights to any additional Intellectual Property Collateral or (ii) becomes entitled to the benefit of any additional Intellectual Property Collateral or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this sentence with respect to such Pledgor shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party. Each Pledgor shall, at the time of filing of the quarterly and annual financial statements required by Section 10.09(a) of the Indenture, with respect to any item of Intellectual Property Collateral owned by a Pledgor and applied for, registered or issued in the United States, and any Exclusive Copyright Licenses, (i) promptly provide to the Collateral Agent written notice of each such item and (ii) promptly thereafter, file the instruments and documents provided for in Section 2.2(c) with respect to such item.

SECTION 6.6 Litigation. Upon the occurrence and during the continuance of any Event of Default, to the extent permissible by law, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any License thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents reasonably requested by the Collateral Agent in aid of such enforcement, and the Pledgors shall promptly reimburse and indemnify the Collateral Agent for all reasonable and documented costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 6.6 in accordance with Sections 6.07 and 14.08(dd) of the Indenture. In the event that, upon the occurrence of and during the continuance of any Event of Default, the Collateral

Agent elects not to bring such suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the reasonable request of the Collateral Agent, to take all reasonable actions, whether by suit, proceeding or other action, as such Pledgor, in its reasonable business judgment, deems necessary and appropriate to prevent the infringement, counterfeiting, unfair competition, dilution, misappropriation, diminution in value of or other damage to any Material IP Collateral by others and for that purpose agrees, subject to the foregoing qualifications, to diligently maintain any such suit, proceeding or other action to prevent such infringement, counterfeiting, unfair competition, dilution, misappropriation, diminution in value of or other damage to the Material IP Collateral owned by any Pledgor.

ARTICLE VII

MAINTENANCE OF RECORDS

Each Pledgor shall, at such Pledgor's sole cost and expense, upon the Collateral Agent's demand (pursuant to any direction given by the Trustee or the Holders of a majority of the aggregate principal amount of the Notes in accordance with the Indenture) made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts, including all documents evidencing Accounts and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Pledgor). Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may (but shall not be obligated to (other than pursuant to any direction given by the Trustee or the Holders of a majority of the aggregate principal amount of the Notes in accordance with the Indenture)) transfer a full and complete copy of any Pledgor's books, records, credit information, reports, memoranda and all other writings relating to the Accounts to and for the use by any person that has acquired or is contemplating acquisition of an interest in the Accounts or the Collateral Agent's security interest therein without the consent of any Pledgor; *provided*, that the Collateral Agent agrees to use reasonable efforts to provide prior written notice of any such transfer to such Pledgor.

ARTICLE VIII

REMEDIES

SECTION 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may from time to time (but shall not be obligated to (other than pursuant to any direction given by the Trustee or the Holders of a majority of the aggregate principal amount of the Notes in accordance with the Indenture)) exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it, the following remedies, in each case, to the fullest extent permitted by applicable law:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or Property at any time payable or receivable in respect of the Pledged Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; *provided, however*, that in the event that any such payments are made directly to any Pledgor, such Pledgor shall promptly (but in no event later than three (3) Business Days after receipt thereof or such later date as may be agreed to in writing by the Collateral Agent) pay such amounts to the Collateral Agent;

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation, with respect to licenses to Trademarks, subject to reasonable quality control provisions in connection with the goods and services offered under any Trademarks sufficient to avoid the risk of cancellation, voiding or invalidation of such Trademarks;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and therewith delivered to the Collateral Agent; (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent; and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 8.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) Retain and apply the Distributions to the Notes Obligations as provided in Article 5 of the Indenture;

(vi) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral subject to Section 5.1(ii); and

(vii) All the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Pledged Collateral) or any other applicable law or in equity, and the Collateral Agent may also, at the direction of the Trustee or Holders of a majority of the aggregate principal amount of the Notes given in accordance with the Indenture, without notice except as specified in Section 8.2, sell, assign, transfer or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Pledged Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Notes Obligations owed to such person as a credit on account of the purchase price of any Pledged Collateral payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the Property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by applicable law, all rights of redemption, stay and/or appraisal that it now has or may at any time in the future have under any applicable law now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 8.2 Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of Pledged Collateral shall be required by any applicable law, 10 days' prior written notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. To the extent permitted by applicable law, no notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 8.3 Waiver of Claims; Other Waivers; Marshalling.

(i) Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice of judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of any of the Pledged Collateral, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such

Pledgor would otherwise have under any applicable law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII except to the extent resulting solely from the Collateral Agent's (or its authorized representative's) gross negligence or willful misconduct as determined in a final, non-appealable judgment by a court of competent jurisdiction. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity or otherwise against such Pledgor and against any and all persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

(ii) To the maximum extent permitted by applicable law, each Pledgor hereby waives demand, notice (except for any notices required hereunder), protest, notice of acceptance of this Agreement, notice of Pledged Collateral received or delivered or any other action taken in reliance hereon.

(iii) The Collateral Agent shall not be required to marshal any present or future collateral security (including the Pledged Collateral) for, or other assurances of payment of, the Notes Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the maximum extent permitted by applicable law, each Pledgor hereby agrees that it will not invoke any applicable law relating to the marshalling of collateral and hereby irrevocably waives the benefits of all such applicable laws.

SECTION 8.4 Standards for Exercising Rights and Remedies. To the extent that applicable laws impose duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Pledgor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) not to incur expenses reasonably deemed significant by the Collateral Agent to prepare Pledged Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Pledged Collateral to be disposed of, or to obtain or, if not required by other applicable laws, to fail to obtain consents for governmental authorities or third parties for the collection or disposition of Pledged Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors or other persons obligated on Pledged Collateral or to fail to remove liens or encumbrances on or any adverse claims against Pledged Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Pledged Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Pledged Collateral through publications or media of general circulation, whether or not the Pledged Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Pledgor, for expressions of interest in acquiring all or any portion of the Pledged Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Pledged Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Pledged Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Pledged Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim or modify disposition warranties, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Pledged Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Pledged Collateral, or (xii) to the extent reasonably deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Pledged Collateral. The Pledgors acknowledge that the purpose of this Section 8.4 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would fulfill the Collateral Agent's duties under the UCC or other applicable laws of the State or any other relevant jurisdiction in the Collateral Agent's exercise of remedies against the Pledged Collateral and that other actions or omissions by the Collateral Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 8.4. Without limiting the foregoing, nothing contained in this Section 8.4 shall be construed to grant any rights to any Pledgor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 8.4.

SECTION 8.5 Certain Sales of Pledged Collateral.

(i) Each Pledgor recognizes that, by reason of certain prohibitions contained in applicable law, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of a Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less

favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales.

(ii) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities' laws, the Collateral Agent may be compelled, with respect to any sale or disposition of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state or foreign securities laws, even if such issuer would agree to do so.

(iii) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property after the occurrence and during the continuance of an Event of Default, upon written request, the applicable Pledgor shall, and shall use commercially reasonable efforts to cause each issuer of Securities Collateral and Investment Property to be sold hereunder to, from time to time furnish to the Collateral Agent all such information as may be necessary or as the Collateral Agent may reasonably request to determine the number and nature or interest of securities or other instruments included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Commission thereunder, as the same are from time to time in effect. Each Pledgor further agrees that a breach of any of the covenants contained in this Section 8.5(iii) will cause irreparable injury to the Collateral Agent and other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 8.5(iii) shall be specifically enforceable against such Pledgor, and such Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants, except for a defense that no Event of Default has occurred or is continuing or that the Notes Obligations (other than contingent obligations and expense reimbursement not then due and payable) have been paid in full.

SECTION 8.6 No Waiver; Cumulative Remedies.

(i) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by applicable law, in equity or otherwise.

(ii) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement or any other Notes Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Pledgors, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 8.7 Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the reasonable written demand of the Collateral Agent (pursuant to any direction given by the Trustee or the

Holders of a majority of the aggregate principal amount of the Notes in accordance with the Indenture), each Pledgor shall execute and deliver to the Collateral Agent an assignment or assignments of the registered Intellectual Property Collateral (and any applications therefor) or such other documents as are reasonably necessary (as determined by the Issuer in good faith) or reasonably requested by the Collateral Agent to carry out the intent and purposes hereof.

ARTICLE IX

APPLICATION OF PROCEEDS

The proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies shall, together with any other sums then held by the Collateral Agent, be applied in accordance with Section 5.06 of the Indenture.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Collateral Agent Appointed Attorney-in-Fact. Each Pledgor hereby appoints the Collateral Agent as its attorney-in-fact, with full power and authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, at the direction of the Trustee or Holders of a majority of the aggregate principal amount of the Notes given in accordance with the Indenture, to take any action and to execute any instrument consistent with the terms of the Indenture, this Agreement and the other Notes Documents which the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable. Each Pledgor hereby ratifies all that such attorney shall lawfully do in accordance with the terms of this Agreement and the other Notes Documents and only to the extent permitted hereunder or thereunder. Notwithstanding anything in this Section 10.1 to the contrary, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 10.1 unless an Event of Default has occurred and is continuing.

SECTION 10.2 Continuing Security Interest. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors, transferees and permitted assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto.

SECTION 10.3 Termination; Release. (a) This Agreement shall automatically terminate upon the satisfaction and discharge of the Indenture in accordance with Section 4.01 thereof. Upon termination hereof, the Lien granted hereby shall automatically terminate and all rights to the Pledged Collateral shall automatically revert to the applicable Pledgor or to such other person as may be entitled thereto pursuant to any Order or other applicable law. The Lien granted hereby shall be automatically released and shall automatically terminate with respect to all or any portion of the Pledged Collateral in accordance with Section 14.02 of the Indenture. A Pledgor shall automatically be released from its obligations hereunder if it ceases to be a Guarantor in accordance with the Indenture.

(b) In connection with any termination or release pursuant to paragraph (a) of this Section 10.3, so long as Issuer shall have provided the Collateral Agent with such certifications or documents as provided in Section 14.02 of the Indenture, the Collateral Agent shall execute and deliver to any Pledgor, at such Pledgor's expense, all documents that such Pledgor shall reasonably request to evidence such termination or release and shall perform such other actions reasonably requested by such Pledgor to effect such release, including delivery of certificates, securities and instruments.

SECTION 10.4 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Indenture and unless in writing (including by electronic mail) and signed by the Collateral Agent and the applicable Pledgor. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof shall be effective only in the specific instance and

for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 10.5 Notices. Unless otherwise provided herein or in the Indenture, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Indenture, as to any Pledgor, addressed to it at the address of Issuer set forth in the Indenture and as to the Collateral Agent, addressed to it at the address set forth in the Indenture, or in each case at such other address as shall be designated by such party in a written notice (which, in the case of notice to the Collateral Agent, may be electronic mail) to the other party complying as to delivery with the terms of this Section 10.5.

SECTION 10.6 Governing Law and Consent to Jurisdiction; Waiver of Jury Trial. The terms of Sections 1.06, 1.12 and 1.17 of the Indenture with respect to governing law, consent of jurisdiction, service of process, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

SECTION 10.7 Severability of Provisions. In the event any provision of this Agreement shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

SECTION 10.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words “delivery,” “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Trustee and the Collateral Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. The Pledgors agree to assume all risks arising out of the use of digital signatures and electronic methods, including without limitation the risk of the Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 10.9 Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 10.10 No Claims Against Collateral Agent. Nothing contained in this Agreement or any other Notes Document, nor the exercise by the Collateral Agent of any of the rights or remedies hereunder, shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other Property in respect of the Pledged Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other Property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other Property is prior to the Lien hereof.

SECTION 10.11 Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Pledgor;

(ii) any lack of validity or enforceability of any Notes Document or any other agreement or instrument relating thereto against any Pledgor;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Notes Obligations, or any other amendment or waiver of or any consent to any departure from any Notes Document or any other agreement or instrument relating thereto (except, and only to the extent provided by, any amendment, waiver or consent executed in accordance with Article 9 of the Indenture which alters any such obligation hereunder);

(iv) any pledge, exchange, release or non-perfection or loss of priority of any other collateral, or any release thereto (except, and only to the extent provided by, any release executed in accordance with Section 10.3 hereof which alters any such obligation hereunder) or amendment or waiver of or consent to any departure from any guarantee thereto (except, and only to the extent provided by, any amendment, waiver or consent executed in accordance with Article 9 of the Indenture which alters any such obligation hereunder), for all or any of the Notes Obligations;

(v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof of any Notes Document; or

(vi) any other circumstances which might otherwise constitute a defense (other than the payment in full in cash of the Notes Obligations (other than contingent obligations and expense reimbursement not yet due and payable)) available to, or a discharge of, the Pledgors.

SECTION 10.12 Concerning the Collateral Agent.

(a) The powers conferred on the Collateral Agent hereunder are solely to protect the Secured Parties' interest in the Pledged Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. Except for the safe custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Pledged Collateral, as to ascertaining or taking action with respect to any Pledged Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Pledged Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equal to that which it accords its own property.

(b) The Pledgors acknowledge that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment, discretion or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them. Notwithstanding anything herein to the contrary, whenever this Agreement provides for any action by, determination to be made by or discretion to be exercised by the Collateral Agent, the Collateral Agent may act or refrain from acting in accordance with the direction of Holders (accompanied by, if requested, indemnity satisfactory to the Collateral Agent) and in the absence of such direction the Collateral Agent shall have no duty to act and no liability to any person for refraining from acting and, provided further, that any direction to the Collateral Agent referenced herein shall be understood to be a direction in accordance with the Indenture including, but not limited to, the limitations provided for in Section 5.12 of the Indenture and which does not require the Collateral Agent to expend or risk its own funds or otherwise incur liability.

(c) U.S. Bank Trust Company, National Association, is entering this Agreement not in its individual or corporate capacity, but solely in its capacity as Collateral Agent under the Indenture. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities of the Collateral Agent set forth in the Indenture, including without limitation in Articles 6 and 14 thereof, as if such rights, privileges, immunities and indemnities were expressly set forth herein.

(d) The Collateral Agent shall have no duty or obligation to make any filings, recordings, re-filings or re-recordings to perfect or maintain the perfection of the Collateral Agent's security interest in the Pledged Collateral.

(e) The Collateral Agent is authorized to enter into the First Lien/Second Lien Intercreditor Agreement or any other customary intercreditor agreement (as attested by a duly authorized officer of Issuer in a certificate delivered to the Collateral Agent) in connection with any debt secured by a lien permitted under the Indenture.

SECTION 10.13 Intercreditor Agreement. Notwithstanding anything herein to the contrary, the exercise of any rights or remedies by the Collateral Agent pursuant to this Agreement are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement and any other customary intercreditor agreement. In the event of any conflict or inconsistency between or among the First Lien/Second Lien Intercreditor Agreement and this Agreement, the terms of the First Lien/Second Lien Intercreditor Agreement shall govern and control, except that this Agreement shall govern with respect to (a) the imposition of the lien and security interest hereof and (b) the governing law applicable to this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Pledgors and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

ACCELERATE DIAGNOSTICS, INC.,
as Pledgor

By: _____
Name:
Title:

Signature Page to Security Agreement

IN WITNESS WHEREOF, the Pledgors and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
solely in its capacity as Collateral Agent

By: _____
Name:
Title:

Signature Page to Security Agreement

SCHEDULE 1

COMMERCIAL TORT CLAIMS

Schedule 1

SCHEDULE 2

LETTERS OF CREDIT

Schedule 2

SCHEDULE 3

FILING OFFICES

Schedule 3

SCHEDULE 4

PLEDGED SECURITIES

Schedule 4

SCHEDULE 5

INTELLECTUAL PROPERTY

Schedule 5

SCHEDULE 6

DEPOSIT ACCOUNTS, SECURITIES ACCOUNTS AND COMMODITY ACCOUNTS

Schedule 6

SCHEDULE 7

DELIVERABLE INTERCOMPANY NOTES, INSTRUMENTS AND TANGIBLE CHATTEL PAPER

Schedule 7

EXHIBIT 1

[Form of]

JOINDER AGREEMENT

[Name of New Pledgor]
[Address of New Pledgor]

[Date]

U.S. Bank Trust Company, National Association
as Collateral Agent for
the Secured Parties referred to below

U.S. Bank Trust Company, National Association
Global Corporate Trust
Seattle Tower
1420 Fifth Ave., 10th Floor
PD-WA-T10W
Seattle, WA 98101
Attention: Richard Krupske (Accelerate Super Priority notes due 2025)

Re: Accelerate Diagnostics, Inc.

Ladies and Gentlemen:

Reference is made to that certain Super-Priority Security Agreement, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), entered into by Accelerate Diagnostics, Inc., a Delaware corporation ("**Issuer**"), the other Pledgors party thereto and U.S. Bank Trust Company, National Association, as collateral agent for the Secured Parties (in such capacity and together with any successors in such capacity, the "**Collateral Agent**").

This joinder agreement (this "**Joinder Agreement**") supplements the Security Agreement and is delivered by the undersigned, [ ] (the "**New Pledgor**"), pursuant to Section 3.5 of the Security Agreement. The New Pledgor hereby agrees to be bound as a Pledgor by all of the terms, covenants and conditions set forth in the Security Agreement to the same extent that it would have been bound if it had been a signatory to the Security Agreement on the execution date of the Security Agreement. Without limiting the generality of the foregoing, the New Pledgor hereby grants and pledges to the Collateral Agent, as collateral security for the full, prompt

and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Notes Obligations, a Lien on and security interest in, all of its right, title and interest in, to and under the Pledged Collateral and expressly assumes all obligations and liabilities of a Pledgor under the Security Agreement and the other Notes Documents. The New Pledgor hereby agrees to each of the covenants applicable to such Pledgor contained in the Security Agreement.

The New Pledgor hereby represents and warrants that (a) set forth under its signature hereto is the true and correct legal name of the New Pledgor, its jurisdiction of formation and the location of its chief executive office and (b) set forth on Schedule I attached hereto is a true and correct schedule of the information required by Schedules 1 through 7 to the Security Agreement applicable to it.

This Joinder Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of an executed counterpart of this Joinder Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Joinder Agreement. This Joinder Agreement is a Notes Document.

THIS JOINDER AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS JOINDER AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

U.S. Bank Trust Company, National Association is entering into this Joinder Agreement solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, indemnities and immunities set forth in the Indenture as if such rights, privileges, indemnities and immunities were set forth herein.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the New Pledgor has caused this Joinder Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[NEW PLEDGOR]

By: _____
Name:
Title:

Legal Name:
Jurisdiction of Formation:
Location of Chief Executive Office:

AGREED TO AND ACCEPTED:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
solely in its capacity as Collateral Agent

By: _____
Name:
Title:

Exhibit 1 – Form of Joinder Agreement
3

EXHIBIT 2

[Form of]

COPYRIGHT SECURITY AGREEMENT

This Copyright Security Agreement dated as of [ ], 20[ ] (this "**Copyright Security Agreement**"), by and among the signatory hereto indicated as a "**Pledgor**" (the "**Pledgor**") in favor of U.S. Bank Trust Company, National Association solely in its capacity as collateral agent for the Secured Parties (in such capacity, together with any successor thereof, the "**Collateral Agent**") pursuant to that certain Indenture, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), by and among Accelerate Diagnostics, Inc., a Delaware corporation ("**Issuer**"), the Pledgor and each of the other guarantors listed on the signature pages thereto, and U.S. Bank Trust Company, National Association, as trustee and as collateral agent.

W I T N E S E T H:

WHEREAS, the Pledgor is party to that certain Super-Priority Security Agreement dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") in favor of the Collateral Agent pursuant to which the Pledgor pledged and granted to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in the Copyright Collateral (as defined below); and

WHEREAS, pursuant to the Security Agreement, the Pledgor is required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Indenture, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings given or given by reference to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. The Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a Lien on and security interest in and to all of the right, title and interest of the Pledgor in, to and under all the following Pledged Collateral of the Pledgor, in each case excluding Excluded Assets, whether now existing or hereafter arising or acquired from time to time (collectively, the "**Copyright Collateral**"):

(a) all works of authorship (whether protected by statutory or common law copyright, whether registered or unregistered, and whether published or unpublished) and all copyright registrations and applications therefor, including the United States registered copyrights, listed on Schedule 1 attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the use of the foregoing, (ii) restorations, renewals and extensions thereof and amendments thereto, (iii) rights to proceeds, income, fees, royalties, damages and payments now or hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements or other violations thereof, (iv) rights to sue or otherwise recover for past, present or future infringements or other violations and (v) rights corresponding thereto throughout the world; and

(b) all Exclusive Copyright Licenses listed on Schedule 1 attached hereto.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement, and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Copyright Security Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Copyright Security Agreement as to the parties hereto and may be used in lieu of the original Copyright Security Agreement 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 5. Governing Law. The terms of Sections 1.06, 1.12 and 1.17 of the Indenture with respect to governing law, consent of jurisdiction, service of process, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

SECTION 6. Concerning the Collateral Agent. U.S. Bank Trust Company, National Association is entering this Copyright Security Agreement not in its individual or corporate capacity, but solely in its capacity as Collateral Agent under the Indenture. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities of the Collateral Agent set forth in the Indenture, including without limitation in Articles 6 and 14 thereof, as if such rights, privileges, immunities and indemnities were expressly set forth herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Pledgor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGOR]

By: _____
Name:
Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
solely in its capacity as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
COPYRIGHT SECURITY AGREEMENT

UNITED STATES COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS; EXCLUSIVE COPYRIGHT LICENSES

United States Copyright Registrations:

OWNER	**TITLE**	**REGISTRATION NUMBER**

United States Copyright Applications:

OWNER	**TITLE**

Exclusive Copyright Licenses:

EXHIBIT 3

[Form of]

PATENT SECURITY AGREEMENT

This Patent Security Agreement, dated as of [ ], 20[ ] (this "**Patent Security Agreement**"), by and among the signatory hereto indicated as a "**Pledgor**" (the "**Pledgor**") in favor of U.S. Bank Trust Company, National Association solely in its capacity as collateral agent for the Secured Parties (in such capacity, together with any successor thereof, the "**Collateral Agent**") pursuant to that certain Indenture, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), by and among Accelerate Diagnostics, Inc., a Delaware corporation ("**Issuer**"), the Pledgor and each of the other guarantors listed on the signature pages thereto, and U.S. Bank Trust Company, National Association, as trustee and as collateral agent.

W I T N E S E T H:

WHEREAS, the Pledgor is party to that certain Super-Priority Security Agreement dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") in favor of the Collateral Agent pursuant to which the Pledgor pledged and granted to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in the Patent Collateral (as defined below); and

WHEREAS, pursuant to the Security Agreement, the Pledgor is required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Indenture, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings given or given by reference to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. The Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a Lien on and security interest in and to all of the right, title and interest of the Pledgor in, to and under all following Pledged Collateral of the Pledgor, in each case excluding Excluded Assets, whether now existing or hereafter arising or acquired from time to time (collectively, the "**Patent Collateral**"): all patents and patent applications (whether issued or applied for), including the United States patents and patent applications, listed on Schedule 1 attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the use of any of the foregoing, (ii) inventions and improvements described and claimed therein, (iii) reissues, substitutes, reexaminations, divisions, renewals, extensions, continuations and continuations-in-part thereof and amendments thereto, (iv) rights to proceeds, income, fees, royalties, damages and payments now or hereafter due and/or payable thereunder and with respect thereto including damages, claims and payments for past, present or future infringements or other violations thereof, (v) rights to sue or otherwise recover for past, present or future infringements or other violations thereof and (vi) rights corresponding thereto throughout the world.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement, and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Patent Security Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Patent Security Agreement as to the parties hereto and may be used in lieu of the original Patent Security Agreement 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 5. Governing Law. The terms of Sections 1.06, 1.12 and 1.17 of the Indenture with respect to governing law, consent of jurisdiction, service of process, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

SECTION 6. Concerning the Collateral Agent. U.S. Bank Trust Company, National Association is entering this Patent Security Agreement not in its individual or corporate capacity, but solely in its capacity as Collateral Agent under the Indenture. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities of the Collateral Agent set forth in the Indenture, including without limitation in Articles 6 or 14 thereof, as if such rights, privileges, immunities and indemnities were expressly set forth herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Pledgor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGOR]

By: _____
Name:
Title:

Accepted and Agreed:

U.S. BANK TRUST COMPANY NATIONAL ASSOCIATION,
solely in its capacity as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
PATENT SECURITY AGREEMENT

UNITED STATES PATENTS AND PATENT APPLICATIONS

United States Patents:

OWNER	**TITLE**	**PATENT NUMBER**

United States Patent Applications:

OWNER	**TITLE**	**APPLICATION NUMBER**

EXHIBIT 4

[Form of]

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement, dated as of [ ], 20[ ] (this "Trademark **Security Agreement**"), by and among the signatory hereto indicated as a "**Pledgor**" (the "**Pledgor**") in favor of U.S. Bank Trust Company, National Association solely in its capacity as collateral agent for the Secured Parties (in such capacity, together with any successor thereof, the "**Collateral Agent**") pursuant to that certain Indenture, dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), by and among Accelerate Diagnostics, Inc., a Delaware corporation ("**Issuer**"), the Pledgor and each of the other guarantors listed on the signature pages thereto, and U.S. Bank Trust Company, National Association, as trustee and as collateral agent.

W I T N E S S E T H:

WHEREAS, the Pledgor is party to that certain Super-Priority Security Agreement dated as of August 8, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") in favor of the Collateral Agent pursuant to which the Pledgor pledged and granted to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in the Trademark Collateral (as defined below); and

WHEREAS, pursuant to the Security Agreement, the Pledgor is required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Indenture, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings given or given by reference to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. The Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a Lien on and security interest in and to all of the right, title and interest of the Pledgor in, to and under all the following Pledged Collateral of the Pledgor, in each case excluding Excluded Assets, whether now existing or hereafter arising or acquired from time to time (collectively, the "**Trademark Collateral**"): all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URLs), domain names, corporate names, trade names, or other indicia of source, whether registered or unregistered, all registrations and applications for the foregoing (whether statutory or common law and whether registered or applied for in the United States or any other country, multi-national registry or any political subdivision thereof), including the United States trademark and service mark registrations and applications for registration listed on Schedule 1 attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the use of any of the foregoing, (ii) all goodwill of the business connected with the use thereof and symbolized thereby, (iii) extensions and renewals thereof and amendments thereto, (iv) rights to proceeds, income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements, dilutions or other violations thereof, (v) rights to sue or otherwise recover for past, present and future infringements, dilutions or other violations thereof and (vi) rights corresponding thereto throughout the world.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement, and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Trademark Security Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Trademark Security Agreement as to the parties hereto and may be used in lieu of the original Trademark Security Agreement 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 5. Governing Law. The terms of Sections 1.06, 1.12 and 1.17 of the Indenture with respect to governing law, consent of jurisdiction, service of process, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

SECTION 6. Concerning the Collateral Agent. U.S. Bank Trust Company, National Association is entering this Trademark Security Agreement not in its individual or corporate capacity, but solely in its capacity as Collateral Agent under the Indenture. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities of the Collateral Agent

set forth in the Indenture, including without limitation in Articles 6 or 14 thereof, as if such rights, privileges, immunities and indemnities were expressly set forth herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGOR]

By: _____
Name:
Title:

Accepted and Agreed:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
solely in its capacity as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
TRADEMARK SECURITY AGREEMENT

UNITED STATES TRADEMARK REGISTRATIONS AND APPLICATIONS

United States Trademark Registrations:

OWNER	**TITLE**	**REGISTRATION NUMBER**

United States Trademark Applications:

OWNER	**MARK**	**SERIAL NUMBER**

Cover	Aug. 08, 2024
Cover [Abstract]	
Document Type	8-K
Amendment Flag	false
Document Period End Date	Aug. 08, 2024
Entity File Number	001-31822
Entity Registrant Name	Accelerate Diagnostics, Inc.
Entity Central Index Key	0000727207
Entity Tax Identification Number	84-1072256
Entity Incorporation, State or Country Code	DE
Entity Address, Address Line One	3950 South Country Club Road
Entity Address, Address Line Two	Suite 470
Entity Address, City or Town	Tucson
Entity Address, State or Province	AZ
Entity Address, Postal Zip Code	85714
City Area Code	520
Local Phone Number	365-3100
Written Communications	false
Soliciting Material	false
Pre-commencement Tender Offer	false
Pre-commencement Issuer Tender Offer	false
Title of 12(b) Security	Common Stock, $0.001 par value per share
Trading Symbol	AXDX
Security Exchange Name	NASDAQ
Entity Emerging Growth Company	false

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   "label": "Entity Central Index Key",
   "documentation": "A unique 10-digit SEC-issued value to identify entities that have filed disclosures with the SEC. It is commonly abbreviated as CIK."
  }
 }
},
"auth_ref": [
 "r2"
]
},
"dei_EntityCommonStockSharesOutstanding": {
"xbrltype": "sharesItemType",
"nsuri": "http://xbrl.sec.gov/dei/2023",
"localname": "EntityCommonStockSharesOutstanding",
"presentation": [
 "http://acceleratediagnostics.com/role/Cover"
],
"lang": {
 "en-us": {
  "role": {
   "label": "Entity Common Stock, Shares Outstanding",
   "documentation": "Indicate number of shares or other units outstanding of each of registrant's classes of capital or common stock or other ownership interests, if and as stated on cover of related periodic report. Where multiple classes or units exist define each class/interest by adding class of stock items such as Common Class A [Member], Common Class B [Member] or Partnership Interest [Member] onto the Instrument [Domain] of the Entity Listings, Instrument."
  }
 }
},
"auth_ref": []
},
"dei_EntityCurrentReportingStatus": {
"xbrltype": "yesNoItemType",
"nsuri": "http://xbrl.sec.gov/dei/2023",
"localname": "EntityCurrentReportingStatus",
"presentation": [
 "http://acceleratediagnostics.com/role/Cover"

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],
"lang": {
 "en-us": {
  "role": {
   "label": "Entity Current Reporting Status",
   "documentation": "Indicate 'Yes' or 'No' whether registrants (1) have 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 registrants were required to file such reports), and (2) have been subject to such filing requirements for the past 90 days. This information should be based on the registrant's current or most recent filing containing the related disclosure."
  }
 }
},
"auth_ref": []
},
"dei_EntityEmergingGrowthCompany": {
 "xbrltype": "booleanItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityEmergingGrowthCompany",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Emerging Growth Company",
    "documentation": "Indicate if registrant meets the emerging growth company criteria."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntityExTransitionPeriod": {
 "xbrltype": "booleanItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityExTransitionPeriod",
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 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Elected Not To Use the Extended Transition Period",
    "documentation": "Indicate if an emerging growth company has elected not to use the extended transition period for complying with any new or revised financial accounting standards."
   }
  }
 },
 "auth_ref": [
  "r19"
 ]
},
"dei_EntityFileNumber": {
 "xbrltype": "fileNumberItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityFileNumber",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity File Number",
    "documentation": "Commission file number. The field allows up to 17 characters. The prefix may contain 1-3 digits, the sequence number may contain 1-8 digits, the optional suffix may contain 1-4 characters, and the fields are separated with a hyphen."
   }
  }
 },
 "auth_ref": []
},
"dei_EntityFilerCategory": {
 "xbrltype": "filerCategoryItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityFilerCategory",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Filer Category",
    "documentation": "Indicate whether the registrant is one of the following: Large Accelerated Filer, Accelerated Filer, Non-accelerated Filer. Definitions of these categories are stated in Rule 12b-2 of the Exchange Act. This information should be based on the registrant's current or most recent filing containing the related disclosure."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntityIncorporationStateCountryCode": {
 "xbrltype": "edgarStateCountryItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityIncorporationStateCountryCode",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Incorporation, State or Country Code",
    "documentation": "Two-character EDGAR code representing the state or country of incorporation."
   }
  }
 },
 "auth_ref": []
},
"dei_EntityInteractiveDataCurrent": {
 "xbrltype": "yesNoItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityInteractiveDataCurrent",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Interactive Data Current",
    "documentation": "Boolean flag that is true when the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files)."
   }
  }
 },
 "auth_ref": [
  "r16"
 ]
},
"dei_EntityPrimarySicNumber": {
 "xbrltype": "sicNumberItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityPrimarySicNumber",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Primary SIC Number",
    "documentation": "Primary Standard Industrial Classification (SIC) Number for the Entity."
   }
  }
 },
 "auth_ref": [
  "r14"
 ]
},
"dei_EntityPublicFloat": {
 "xbrltype": "monetaryItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityPublicFloat",
 "crdr": "credit",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Public Float",
    "documentation": "The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter."
   }
  }
 },
 "auth_ref": []
},
"dei_EntityRegistrantName": {
 "xbrltype": "normalizedStringItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityRegistrantName",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Registrant Name",
    "documentation": "The exact name of the entity filing the report as specified in its charter, which is required by forms filed with the SEC."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntityShellCompany": {
 "xbrltype": "booleanItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityShellCompany",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Shell Company",
    "documentation": "Boolean flag that is true when the registrant is a shell company as defined in Rule 12b-2 of the Exchange Act."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntitySmallBusiness": {
 "xbrltype": "booleanItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntitySmallBusiness",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Small Business",
    "documentation": "Indicates that the company is a Smaller Reporting Company (SRC)."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntityTaxIdentificationNumber": {
 "xbrltype": "employerIdItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityTaxIdentificationNumber",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Tax Identification Number",
    "documentation": "The Tax Identification Number (TIN), also known as an Employer Identification Number (EIN), is a unique 9-digit value assigned by the IRS."
   }
  }
 },
 "auth_ref": [
  "r2"
 ]
},
"dei_EntityVoluntaryFilers": {
 "xbrltype": "yesNoItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityVoluntaryFilers",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Voluntary Filers",
    "documentation": "Indicate 'Yes' or 'No' if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act."
   }
  }
 },
 "auth_ref": []
},
"dei_EntityWellKnownSeasonedIssuer": {
 "xbrltype": "yesNoItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "EntityWellKnownSeasonedIssuer",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Well-known Seasoned Issuer",
    "documentation": "Indicate 'Yes' or 'No' if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Is used on Form Type: 10-K, 10-Q, 8-K, 20-F, 6-K, 10-K/A, 10-Q/A, 20-F/A, 6-K/A, N-CSR, N-Q, N-1A."
   }
  }
 },
 "auth_ref": [
  "r17"
 ]
},
"dei_Extension": {
 "xbrltype": "normalizedStringItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "Extension",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Extension",
    "documentation": "Extension number for local phone number."
   }
  }
 },
 "auth_ref": []
},
"dei_LocalPhoneNumber": {
 "xbrltype": "normalizedStringItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "LocalPhoneNumber",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Local Phone Number",
    "documentation": "Local phone number for entity."
   }
  }
 },
 "auth_ref": []
},
"dei_NoTradingSymbolFlag": {
 "xbrltype": "trueItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "NoTradingSymbolFlag",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "No Trading Symbol Flag",
    "documentation": "Boolean flag that is true only for a security having no trading symbol."
   }
  }
 },
 "auth_ref": []
},
"dei_OtherReportingStandardItemNumber": {
 "xbrltype": "otherReportingStandardItemNumberItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2023",
 "localname": "OtherReportingStandardItemNumber",
 "presentation": [
  "http://acceleratediagnostics.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Other Reporting Standard Item Number",
    "documentation": "\"Item 17\" or \"Item 18\" specified when the basis of accounting is neither US GAAP nor IFRS."
   }
  }
 },
 "auth_ref": [
  "r13"
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   ]
  },
  "dei_PreCommencementIssuerTenderOffer": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "PreCommencementIssuerTenderOffer",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Pre-commencement Issuer Tender Offer",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r7"
   ]
  },
  "dei_PreCommencementTenderOffer": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "PreCommencementTenderOffer",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Pre-commencement Tender Offer",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r8"
   ]
  },
  "dei_Security12bTitle": {
   "xbrltype": "securityTitleItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "Security12bTitle",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Title of 12(b) Security",
      "documentation": "Title of a 12(b) registered security."
     }
    }
   },
   "auth_ref": [
    "r1"
   ]
  },
  "dei_Security12gTitle": {
   "xbrltype": "securityTitleItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "Security12gTitle",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Title of 12(g) Security",
      "documentation": "Title of a 12(g) registered security."
     }
    }
   },
   "auth_ref": [
    "r5"
   ]
  },
  "dei_SecurityExchangeName": {
   "xbrltype": "edgarExchangeCodeItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "SecurityExchangeName",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Security Exchange Name",
      "documentation": "Name of the Exchange on which a security is registered."
     }
    }
   },
   "auth_ref": [
    "r4"
   ]
  },
  "dei_SecurityReportingObligation": {
   "xbrltype": "securityReportingObligationItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "SecurityReportingObligation",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Security Reporting Obligation",
      "documentation": "15(d), indicating whether the security has a reporting obligation under that section of the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r9"
   ]
  },
  "dei_SolicitingMaterial": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "SolicitingMaterial",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Soliciting Material",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as soliciting material pursuant to Rule 14a-12 under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r10"
   ]
  },
  "dei_TradingSymbol": {
   "xbrltype": "tradingSymbolItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "TradingSymbol",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Trading Symbol",
      "documentation": "Trading symbol of an instrument as listed on an exchange."
     }
    }
   },
   "auth_ref": []
  },
  "dei_WrittenCommunications": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2023",
   "localname": "WrittenCommunications",
   "presentation": [
    "http://acceleratediagnostics.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Written Communications",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as written communications pursuant to Rule 425 under the Securities Act."
     }
    }
   },
   "auth_ref": [
    "r18"
   ]
  }
 }
}
},
"std_ref": {
 "r0": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12"
 },
 "r1": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12",
  "Subsection": "b"
 },
 "r2": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12",
  "Subsection": "b-2"
 },
 "r3": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12",
  "Subsection": "b-23"
 },
 "r4": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12",
  "Subsection": "d1-1"
 },
 "r5": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12",
  "Subsection": "g"
 },
 "r6": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "12, 13, 15d"
 },
 "r7": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "13e",
  "Subsection": "4c"
 },
 "r8": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "14d",
  "Subsection": "2b"
 },
 "r9": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Number": "240",
  "Section": "15",
  "Subsection": "d"
 },
 "r10": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Exchange Act",
  "Section": "14a",
  "Number": "240",
  "Subsection": "12"
 },
 "r11": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Form 10-K",
  "Number": "249",
  "Section": "310"
 },
 "r12": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Form 10-Q",
  "Number": "240",
  "Section": "308",
  "Subsection": "a"
 },
 "r13": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Form 20-F",
  "Number": "249",
  "Section": "220",
  "Subsection": "f"
 },
 "r14": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Form 40-F",
  "Number": "249",
  "Section": "240",
  "Subsection": "f"
 },
 "r15": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Forms 10-K, 10-Q, 20-F",
  "Number": "240",
  "Section": "13",
  "Subsection": "a-1"
 },
 "r16": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Regulation S-T",
  "Number": "232",
  "Section": "405"
 },
 "r17": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Securities Act",
  "Number": "230",
  "Section": "405"
 },
 "r18": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Securities Act",
  "Number": "230",
  "Section": "425"
 },
 "r19": {
  "role": "http://www.xbrl.org/2003/role/presentationRef",
  "Publisher": "SEC",
  "Name": "Securities Act",
  "Number": "7A",
  "Section": "B",
  "Subsection": "2"
 }
}
}
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