

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended **June 30, 2022**

OR

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

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

Commission File Number: **001-39533**

**Corsair Gaming, Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**82-2335306**

(I.R.S. Employer  
Identification No.)

**115 N. McCarthy Boulevard**

**Milpitas, CA 95035**

(Address of principal executive offices and zip code)

**(510) 657-8747**

(Registrant's telephone number, including area code)

**47100 Bayside Pkwy**

**Fremont, CA 94538**

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	CRSR	The Nasdaq Global Select Market

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

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

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

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

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

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

As of July 27, 2022, the registrant had 95,791,805 shares of common stock, \$0.0001 par value per share, outstanding.

**Table of Contents**

	<u>Page</u>
<b>PART I.</b>	
	<b>FINANCIAL INFORMATION</b>
Item 1.	<a href="#">Financial Statements (Unaudited)</a>
	<a href="#">Condensed Consolidated Statements of Operations - Three and Six Months Ended June 30, 2022 and June 30, 2021</a>
	<a href="#">Condensed Consolidated Statements of Comprehensive Income (Loss) - Three and Six Months Ended June 30, 2022 and June 30, 2021</a>
	<a href="#">Condensed Consolidated Balance Sheets - As of June 30, 2022 and December 31, 2021</a>
	<a href="#">Condensed Consolidated Statements of Shareholder's Equity - Three and Six Months Ended June 30, 2022 and June 30, 2021</a>
	<a href="#">Condensed Consolidated Statements of Cash Flows – Six Months Ended June 30, 2022 and June 30, 2021</a>
	<a href="#">Notes to Condensed Consolidated Financial Statements</a>
Item 2.	<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>
Item 3.	<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>
Item 4.	<a href="#">Controls and Procedures</a>
<b>PART II.</b>	<b>OTHER INFORMATION</b>
Item 1.	<a href="#">Legal Proceedings</a>
Item 1A.	<a href="#">Risk Factors</a>
Item 2.	<a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>
Item 3.	<a href="#">Defaults Upon Senior Securities</a>
Item 4.	<a href="#">Mine Safety Disclosures</a>
Item 5.	<a href="#">Other Information</a>
Item 6.	<a href="#">Exhibits</a>
	<a href="#">Signatures</a>

## NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934 (the Exchange Act) that reflect our current views with respect to, among other things, our operations and financial performance. These forward-looking statements are included throughout this Quarterly Report and relate to matters such as our industry, business strategy, goals and expectations concerning our market position, future operations, margins, profitability, capital expenditures, liquidity and capital resources and other financial and operating information. We have used the words “anticipate,” “assume,” “believe,” “continue,” “could,” “estimate,” “expect,” “foreseeable,” “future,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “seek,” “will” and similar terms and phrases to identify the forward-looking statements.

The forward-looking statements contained in this Quarterly Report on Form 10-Q are based on management’s current expectations and are subject to uncertainty and changes in circumstances. There can be no assurance that future developments affecting us will be those that we have anticipated. Actual results may differ materially from these expectations due to changes in global, regional or local economic, business, competitive, market, regulatory and other factors, many of which are beyond our control, including, for example, the COVID-19 pandemic. We believe that these factors include but are not limited to those described under Part II, Item 1A, “Risk Factors” in this Quarterly Report on Form 10-Q. These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this Quarterly Report on Form 10-Q. We undertake no obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities laws.

**PART I—FINANCIAL INFORMATION**
**Item 1. Financial Statements (Unaudited).**

**Corsair Gaming, Inc.**  
**Condensed Consolidated Statements of Operations**  
**(Unaudited, in thousands, except per share amounts)**

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
Net revenue	\$ 283,908	\$ 472,903	\$ 664,599	\$ 1,002,317
Cost of revenue	247,449	342,552	537,384	711,638
Gross profit	36,459	130,351	127,215	290,679
Operating expenses:				
Sales, general and administrative	73,393	80,169	149,524	158,022
Product development	18,026	15,469	35,136	30,655
Total operating expenses	91,419	95,638	184,660	188,677
Operating income (loss)	(54,960)	34,713	(57,445)	102,002
Other (expense) income:				
Interest expense	(1,676)	(4,508)	(2,955)	(9,454)
Other income (expense), net	633	(175)	134	(2,600)
Total other expense, net	(1,043)	(4,683)	(2,821)	(12,054)
Income (loss) before income taxes	(56,003)	30,030	(60,266)	89,948
Income tax benefit (expense)	4,164	(2,285)	5,147	(15,480)
Net income (loss)	(51,839)	27,745	(55,119)	74,468
Less: Net income (loss) attributable to noncontrolling interests	174	—	(233)	—
Net income (loss) attributable to Corsair Gaming, Inc.	<u>\$ (52,013)</u>	<u>\$ 27,745</u>	<u>\$ (54,886)</u>	<u>\$ 74,468</u>
Calculation of net income (loss) per share attributable to common stockholders of Corsair Gaming, Inc.:				
Net income (loss) attributable to Corsair Gaming, Inc.	\$ (52,013)	\$ 27,745	(54,886)	74,468
Change in redemption value of redeemable noncontrolling interests	(7,379)	—	(9,640)	—
Net income (loss) attributable to common stockholders of Corsair Gaming, Inc.	<u>\$ (59,392)</u>	<u>\$ 27,745</u>	<u>\$ (64,526)</u>	<u>\$ 74,468</u>
Net income (loss) per share attributable to common stockholders of Corsair Gaming, Inc.:				
Basic	\$ (0.62)	\$ 0.30	\$ (0.68)	\$ 0.81
Diluted	\$ (0.62)	\$ 0.28	\$ (0.68)	\$ 0.74
Weighted-average common shares outstanding:				
Basic	95,467	92,792	95,372	92,374
Diluted	95,467	100,074	95,372	100,145

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

**Corsair Gaming, Inc.**  
**Condensed Consolidated Statements of Comprehensive Income (Loss)**  
**(Unaudited, in thousands)**

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30,</b>		<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
Net income (loss)	\$ (51,839)	\$ 27,745	\$ (55,119)	\$ 74,468
Other comprehensive gain (loss):				
Foreign currency translation adjustments, net of tax benefit (expense) of \$(164) and \$0 for the three months ended June 30, 2022 and 2021, respectively, and \$(13) and \$0 for the six months ended June 30, 2022 and 2021, respectively	(5,154)	481	(7,412)	646
Unrealized foreign exchange gain (loss) from long-term intercompany loans, net of tax benefit (expense) of \$55 and \$(12) for the three months ended June 30, 2022 and 2021, respectively, and \$74 and \$32 for the six months ended June 30, 2022 and 2021, respectively	(277)	63	(372)	(161)
Comprehensive income (loss)	(57,270)	28,289	(62,903)	74,953
Less: Comprehensive loss attributable to noncontrolling interests	(91)	—	(697)	—
Comprehensive income (loss) attributable to Corsair Gaming, Inc.	<u>\$ (57,179)</u>	<u>\$ 28,289</u>	<u>\$ (62,206)</u>	<u>\$ 74,953</u>

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

**Corsair Gaming, Inc.**  
**Condensed Consolidated Balance Sheets**  
(Unaudited, in thousands, except per share amounts)

	<u>June 30,</u> <u>2022</u>	<u>December 31,</u> <u>2021</u>
<b>Assets</b>		
Current assets:		
Cash	\$ 35,851	\$ 62,415
Restricted cash	2,620	2,734
Accounts receivable, net	170,309	291,287
Inventories	292,586	298,315
Prepaid expenses and other current assets	53,331	51,024
Total current assets	<u>554,697</u>	<u>705,775</u>
Restricted cash, noncurrent	231	231
Property and equipment, net	22,598	16,819
Goodwill	347,907	317,054
Intangible assets, net	236,481	225,709
Other assets	69,978	71,808
Total assets	<u>\$ 1,231,892</u>	<u>\$ 1,337,396</u>
<b>Liabilities</b>		
Current liabilities:		
Debt maturing within one year	\$ 4,707	\$ 4,753
Accounts payable	193,530	236,120
Other liabilities and accrued expenses	158,296	205,874
Total current liabilities	<u>356,533</u>	<u>446,747</u>
Long-term debt	240,377	242,898
Deferred tax liabilities	23,247	25,700
Other liabilities, noncurrent	49,374	53,871
Total liabilities	<u>669,531</u>	<u>769,216</u>
Commitments and Contingencies (Note 9)		
<b>Temporary equity</b>		
Redeemable noncontrolling interests	26,749	—
<b>Permanent equity</b>		
Corsair Gaming, Inc. stockholders' equity:		
Preferred stock, \$0.0001 par value: 5,000 shares authorized, nil and nil shares issued and outstanding as of June 30, 2022 and December 31, 2021, respectively	—	—
Common stock, \$0.0001 par value: 300,000 shares authorized, 95,780 and 94,510 shares issued and outstanding as of June 30, 2022 and December 31, 2021, respectively	10	9
Additional paid-in capital	498,741	470,364
Retained earnings	33,621	98,147
Accumulated other comprehensive loss	(7,660)	(340)
Total Corsair Gaming, Inc. stockholders' equity	<u>524,712</u>	<u>568,180</u>
Nonredeemable noncontrolling interests	10,900	—
Total permanent equity	<u>535,612</u>	<u>568,180</u>
Total liabilities, temporary equity and permanent equity	<u>\$ 1,231,892</u>	<u>\$ 1,337,396</u>

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

**Corsair Gaming, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(Unaudited, in thousands)

**Three Months Ended June 30, 2022**

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total Corsair Gaming, Inc. Stockholders' Equity	Nonredeemable Noncontrolling Interests	Total Permanent Equity
	Shares	Amount						
Balance as of March 31, 2022	95,373	\$ 10	\$ 489,745	\$ 93,013	\$ (2,494)	\$ 580,274	\$ 11,837	\$ 592,111
Net income (loss)	—	—	—	(52,013)	—	(52,013)	71	(51,942)
Other comprehensive loss	—	—	—	—	(5,166)	(5,166)	(108)	(5,274)
Change in redemption value of redeemable noncontrolling interests	—	—	—	(7,379)	—	(7,379)	—	(7,379)
Dividend declared to nonredeemable noncontrolling interests	—	—	—	—	—	—	(900)	(900)
Issuance of common stock in connection with employee equity incentive plans	413	—	2,981	—	—	2,981	—	2,981
Shares withheld related to net share settlement	(6)	—	(110)	—	—	(110)	—	(110)
Stock-based compensation	—	—	6,125	—	—	6,125	—	6,125
Balance as of June 30, 2022	<u>95,780</u>	<u>\$ 10</u>	<u>\$ 498,741</u>	<u>\$ 33,621</u>	<u>\$ (7,660)</u>	<u>\$ 524,712</u>	<u>\$ 10,900</u>	<u>\$ 535,612</u>

**Three Months Ended June 30, 2021**

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income	Total Corsair Gaming, Inc. Stockholders' Equity	Nonredeemable Noncontrolling Interests	Total Permanent Equity
	Shares	Amount						
Balance as of March 31, 2021	92,087	\$ 9	\$ 442,320	\$ 43,910	\$ 1,468	\$ 487,707	\$ —	\$ 487,707
Net income	—	—	—	27,745	—	27,745	—	27,745
Other comprehensive income	—	—	—	—	544	544	—	544
Issuance of common stock in connection with employee equity incentive plans	1,703	—	8,889	—	—	8,889	—	8,889
Shares withheld related to net share settlement	—	—	(7)	—	—	(7)	—	(7)
Stock-based compensation	—	—	4,808	—	—	4,808	—	4,808
Balance as of June 30, 2021	<u>93,790</u>	<u>\$ 9</u>	<u>\$ 456,010</u>	<u>\$ 71,655</u>	<u>\$ 2,012</u>	<u>\$ 529,686</u>	<u>\$ —</u>	<u>\$ 529,686</u>

	Six Months Ended June 30, 2022							
	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity	Nonredeemable Noncontrolling Interests	Total Permanent Equity
	Shares	Amount						
Balance as of December 31, 2021	94,510	\$ 9	\$ 470,364	\$ 98,147	\$ (340)	\$ 568,180	\$ —	\$ 568,180
Issuance of common stock in relation to business acquisition	690	1	14,504	—	—	14,505	—	14,505
Noncontrolling interests from business combination	—	—	—	—	—	—	12,084	12,084
Net loss	—	—	—	(54,886)	—	(54,886)	(95)	(54,981)
Other comprehensive loss	—	—	—	—	(7,320)	(7,320)	(189)	(7,509)
Change in redemption value of redeemable noncontrolling interests	—	—	—	(9,640)	—	(9,640)	—	(9,640)
Dividend declared to nonredeemable noncontrolling interests	—	—	—	—	—	—	(900)	(900)
Issuance of common stock in connection with employee equity incentive plans	627	—	3,508	—	—	3,508	—	3,508
Shares withheld related to net share settlement	(47)	—	(977)	—	—	(977)	—	(977)
Stock-based compensation	—	—	11,342	—	—	11,342	—	11,342
Balance as of June 30, 2022	<u>95,780</u>	<u>\$ 10</u>	<u>\$ 498,741</u>	<u>\$ 33,621</u>	<u>\$ (7,660)</u>	<u>\$ 524,712</u>	<u>\$ 10,900</u>	<u>\$ 535,612</u>

	Six Months Ended June 30, 2021							
	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income	Total Stockholders' Equity	Nonredeemable Noncontrolling Interests	Total Permanent Equity
	Shares	Amount						
Balance as of December 31, 2020	91,935	\$ 9	\$ 438,667	\$ (2,813)	\$ 1,527	\$ 437,390	\$ —	\$ 437,390
Net income	—	—	—	74,468	—	74,468	—	74,468
Other comprehensive income	—	—	—	—	485	485	—	485
Issuance of common stock in connection with employee equity incentive plans	1,855	—	9,466	—	—	9,466	—	9,466
Shares withheld related to net share settlement	—	—	(7)	—	—	(7)	—	(7)
Stock-based compensation	—	—	7,884	—	—	7,884	—	7,884
Balance as of June 30, 2021	<u>93,790</u>	<u>\$ 9</u>	<u>\$ 456,010</u>	<u>\$ 71,655</u>	<u>\$ 2,012</u>	<u>\$ 529,686</u>	<u>\$ —</u>	<u>\$ 529,686</u>

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



**Corsair Gaming, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(Unaudited, in thousands)

	Six Months Ended June 30,	
	2022	2021
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ (55,119)	\$ 74,468
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Stock-based compensation	11,234	7,844
Depreciation	5,149	4,938
Amortization	23,572	17,414
Debt issuance costs amortization	172	1,052
Loss on debt extinguishment	—	797
Deferred income taxes	(10,820)	(5,188)
Other	2,915	1,066
Changes in operating assets and liabilities:		
Accounts receivable	120,046	32,508
Inventories	10,559	(58,895)
Prepaid expenses and other assets	(9,481)	(9,645)
Accounts payable	(43,496)	(37,662)
Other liabilities and accrued expenses	(44,680)	30,700
Net cash provided by operating activities	<u>10,051</u>	<u>59,397</u>
<b>Cash flows from investing activities:</b>		
Acquisition of business, net of cash acquired	(19,534)	(1,684)
Payment of deferred contingent consideration	(95)	(4,353)
Purchase of property and equipment	(11,921)	(4,894)
Investment in available-for-sale convertible note	(1,000)	—
Net cash used in investing activities	<u>(32,550)</u>	<u>(10,931)</u>
<b>Cash flows from financing activities:</b>		
Repayment of debt	(2,750)	(53,000)
Borrowing from line of credit	403,000	—
Repayment of line of credit	(403,000)	—
Payment of contingent consideration	(438)	—
Proceeds from issuance of shares through employee equity incentive plans	3,508	9,466
Payment of taxes related to net share settlement of equity awards	(997)	(7)
Net cash used in financing activities	<u>(677)</u>	<u>(43,541)</u>
Effect of exchange rate changes on cash	(3,502)	58
Net increase (decrease) in cash and restricted cash	(26,678)	4,983
Cash and restricted cash at the beginning of the period	65,380	133,568
Cash and restricted cash at the end of the period	<u>\$ 38,702</u>	<u>\$ 138,551</u>
<b>Supplemental cash flow disclosures:</b>		
Cash paid for interest	\$ 2,665	\$ 7,590
Cash paid for income taxes	8,235	5,423
<b>Supplemental schedule of non-cash investing and financing activities:</b>		
Equipment purchased and unpaid at period end	\$ 2,204	\$ 1,719
Right-of-use assets obtained in exchange for operating lease liabilities	565	35,036
Issuance of common stock relating to business acquisition	14,504	—
Deferred and contingent purchase consideration related to business acquisitions	—	735

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

**Corsair Gaming, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Description of Business**

***Description of Business***

Corsair Gaming, Inc., a Delaware corporation, together with its subsidiaries (*collectively*, “*Corsair*” the “*Company*”, “*we*”, “*us*”, or “*our*”), is a global provider and innovator of high-performance gear for gamers, streamers and content creators, many of which build their own PCs using our components.

Corsair is organized into two reportable segments:

- **Gamer and creator peripherals.** Includes our high-performance gaming keyboards, mice, headsets, controllers, and our streaming gear, which includes capture cards, Stream Decks, USB microphones, our Facecam streaming camera, studio accessories and EpocCam software, as well as coaching and training services, among others.
- **Gaming components and systems.** Includes our high-performance power supply units, or PSUs, cooling solutions, computer cases, DRAM modules, as well as high-end prebuilt and custom-built gaming PCs, and gaming monitor, among others.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

Our interim condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“*U.S. GAAP*”) and applicable rules and regulations of the U.S. Securities and Exchange Commission (“*SEC*”) regarding interim financial reporting. The accounting policies we follow are set forth in Part II, Item 8, Note 2, Significant Accounting Policies, of the Notes to the Consolidated Financial Statements included in our Annual Report on Form 10K for the year ended December 31, 2021 which was filed with the SEC on March 1, 2022.

The condensed consolidated balance sheet as of December 31, 2021, included herein, was derived from the audited consolidated financial statements as of that date. Certain information and note disclosures normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed, combined or omitted pursuant to such rules and regulations. Therefore, these interim condensed consolidated financial statements should be read in conjunction with our consolidated financial statements and notes thereto for the year ended December 31, 2021, included in our Annual Report on Form 10-K.

The interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements, and in management’s opinion, include all adjustments, which consist of only normal recurring adjustments necessary for the fair statement of our condensed consolidated balance sheet as of June 30, 2022 and our results of operations for the three and six months ended June 30, 2022 and 2021. The results for the three and six months ended June 30, 2022 are not necessarily indicative of the results expected for the current fiscal year or any other future periods.

***Principles of Consolidation***

The accompanying condensed consolidated financial statements include the accounts of Corsair and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. For consolidated entities where we own less than 100% of the equity, our consolidated net comprehensive income (loss) is reduced by the portion attributable to the noncontrolling interests.

In determining whether an entity is considered a controlled entity, we apply the VIE (Variable Interest Entity) and VOE (voting interest entity) models. Entities that do not qualify as a VIE are assessed for consolidation under the VOE model. Under the VOE model, we consolidate the entity if we determine that we have a controlling financial interest in the entity through our ownership of greater than 50% of the outstanding voting shares of the entity and that other equity holders do not have substantive voting, participating or liquidation rights.

On January 1, 2022 (the “*Closing*” or “*Closing Date*”), we completed the acquisition of a 51% ownership stake in Elgato iDisplay Holdings LTD. and its related companies (together “*iDisplay*”). (See Note 5, Business Combination - iDisplay Acquisition for more details on the iDisplay Acquisition). We have determined that iDisplay does not qualify as a VIE and Corsair has a controlling financial

interest in iDisplay under the VOE model and therefore, iDisplay's results of operations are fully consolidated with Corsair with effect from January 1, 2022. As a result, we recorded a net income (loss) of \$0.2 million and \$(0.2) million attributable to noncontrolling interests in our condensed consolidated statement of operations for the three and six months ended June 30, 2022, respectively, equal to the 49% of the ownership interest retained in iDisplay by the noncontrolling interests.

### ***Noncontrolling Interests***

We have included both redeemable noncontrolling interests and noncontrolling interests in our condensed consolidated balance sheet in connection with our consolidation of the 51% ownership of iDisplay.

Redeemable noncontrolling interests that are redeemable and not solely within our control are classified within temporary equity in the condensed consolidated balance sheets. Redeemable noncontrolling interests are measured at the greater of the redemption value (calculated based on the formula stipulated in the Shareholders Agreement between the iDisplay seller and Corsair and, including the amounts for dividends not currently declared or paid, for which the payment is not solely within our control), or the carrying value before giving effect to the redemption feature. The redeemable noncontrolling interests are recorded at their maximum redemption value at each reporting date. The redemption value is remeasured each quarter and changes in the value are recognized immediately. Any resulting change in the value of the redeemable noncontrolling interests is recognized through retained earnings and this adjustment also impacts the net income or loss attributable to common stockholders of Corsair Gaming, Inc used in the net income (loss) per share calculation. (See Note 16 for more information regarding the redeemable noncontrolling interests).

In addition, we have noncontrolling interests recorded at carrying value which do not have redemption features and are classified within permanent equity in our condensed consolidated balance sheet.

### ***Use of Estimates***

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Such estimates include, but are not limited to, the valuation of intangible assets, accounts receivable, sales return reserves, reserves for customer incentives, warranty reserves, inventory, derivative instruments, stock-based compensation, and deferred income tax. These estimates and assumptions are based on management's best estimates and judgment. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment. We adjust such estimates and assumptions when facts and circumstances dictate. Actual results could differ materially from those estimates due to risks and uncertainties, including uncertainty in the current economic environment due to COVID-19.

### ***Risks and Uncertainties related to the COVID-19 Pandemic and Other General Risks***

In February 2022, Russia invaded Ukraine resulting in, among other things, broad economic sanctions being imposed on Russia, which has further increased existing global supply chain, logistics, and inflationary challenges. Although our business in Russia and Ukraine was not material to our results, we believe the war has degraded the consumer sentiment in Europe and coupled with the unexpected inflationary pressures which dampened consumer spending, attributed to the 40.0% and 33.7% decrease in our net revenue in the three and six months ended June 30, 2022, respectively, compared to the same periods last year.

Due to the COVID-19 pandemic, there has been and will continue to be uncertainty and disruption in the global economy and financial markets. Since early 2020, we have experienced an increase in demand for our gear as more people were under shelter-in-place restrictions, which we believe have limited people's access to alternative forms of entertainment and social interaction, and thus have increased the demand for home entertainment and connecting with others through content creation. In contrast, as the COVID-19 pandemic subsides, it has resulted in shelter-in-place and other similar restrictions being eased. Such easing of restrictions has resulted in consumers returning to other alternative forms of entertainment and interaction. This in turn has resulted in a decline in demand for our products since the second half of 2021.

In addition, we have experienced and continue to experience supply chain challenges, including longer production and shipping times, and increased shipping and logistics costs, each of which has negatively impacted our gross margins, as well as the need to purchase long-lead time items ahead of demand due to supply constraints.

The extent of the impact of macroeconomic conditions, the COVID-19 pandemic, geopolitical tensions and supply chain challenges on our business, sales, results of operations, cash flows and financial condition will depend on future developments, which are not within our control and are highly uncertain and cannot be predicted. We will continue to evaluate these risks and uncertainties and further our mitigation plans.

Our inventory impairment and related charges increased by \$22.7 million in the three months ended June 30, 2022, as compared to the same period last year, primarily resulting from our inventory valuation assessment and our plan to rationalize our inventory

level to align with the current revenue outlook at end of June 2022. In addition, in the three months ended June 30, 2022, in order to align our expenses with the expected revenue level, we implemented a restructuring plan and terminated 92 employees worldwide, resulting in approximately \$1.5 million of restructuring costs, primarily consisting of severance and benefits. Our restructuring plan has been substantially completed as of June 2022.

### Recently Adopted Accounting Pronouncements

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848)*, to provide optional expedients and exceptions for applying generally accepted accounting principles to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. We adopted this standard effective January 1, 2022. The adoption of this new standard did not have a material impact on our condensed consolidated financial statements.

In October 2021, the FASB issued ASU No. 2021-08, *Business Combinations (Topic 805)*, which requires contract assets and contract liabilities (i.e., deferred revenue) acquired in a business combination to be recognized and measured by the acquirer on the acquisition date in accordance with ASC 606, Revenue from Contracts with Customers. Generally, this new guidance will result in the acquirer recognizing contract assets and contract liabilities at the same amounts recorded by the acquiree. Historically, such amounts were recognized by the acquirer at fair value in acquisition accounting. We adopted this standard effective January 1, 2022. The adoption of this new standard did not have a material impact on our condensed consolidated financial statements.

### Accounting Pronouncements Issued but Not Yet Adopted

None.

### 3. Fair Value Measurement

U.S. GAAP establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The hierarchy is broken down into the following three levels of inputs that may be used to measure fair value:

*Level 1*—Quoted prices are available in active markets for identical assets or liabilities as of the measurement date.

*Level 2*—Pricing inputs are other than quoted prices in active market, which are either directly or indirectly observable as of the report date. The nature of these securities includes investments for which quoted prices are available but traded less frequently and investments that are fair valued using other securities, the parameters of which can be directly observed.

*Level 3*—Securities that have little to no pricing observability as of the report date. These securities are measured using management’s best estimate of fair value, where the inputs into the determination of fair value are not observable and require significant management judgment or estimation.

The carrying values of certain of our financial instruments, including accounts receivable and accounts payable, approximate their fair values due to their short maturities. The following tables summarize our financial assets and financial liabilities that were measured at fair value on a recurring basis, and indicate the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands):

	June 30, 2022			Total
	(Level 1)	(Level 2)	(Level 3)	
<b>Assets:</b>				
Foreign currency forward contracts <sup>(1)</sup>	\$ —	\$ 177	\$ —	\$ 177
Available-for-sale debt securities <sup>(2)</sup>	—	—	1,000	1,000
Total assets	\$ —	\$ 177	\$ 1,000	\$ 1,177
<b>Liabilities:</b>				
Deferred cash consideration in connection with a business acquisition—SCUF <sup>(3)</sup>	\$ —	\$ —	\$ 954	\$ 954
Foreign currency forward contracts <sup>(1)</sup>	—	97	—	97
Total liabilities	\$ —	\$ 97	\$ 954	\$ 1,051

	December 31, 2021			
	(Level 1)	(Level 2)	(Level 3)	Total
<b>Assets:</b>				
Foreign currency forward contracts <sup>(1)</sup>	\$ —	\$ 33	\$ —	\$ 33
Other	—	3	—	3
Total assets	\$ —	\$ 36	\$ —	\$ 36
<b>Liabilities:</b>				
Deferred cash consideration in connection with a business acquisition—SCUF <sup>(3)</sup>	\$ —	\$ —	\$ 1,250	\$ 1,250
Foreign currency forward contracts <sup>(1)</sup>	—	427	—	427
Other	—	—	224	224
Total liabilities	\$ —	\$ 427	\$ 1,474	\$ 1,901

- (1) The fair values of the forward contracts were based on similar exchange traded derivatives and the related asset or liability is included within Level 2 of the fair value hierarchy.
- (2) In May 2022, we invested in a convertible promissory note issued by a private company (the “Note”) for \$1.0 million. The Note is interest bearing and matures in April 2023. The Note is classified as an available-for-sale security and is included in prepaid expenses and other assets in our condensed consolidated balance sheets. We included the Note as Level 3 in the fair value hierarchy due to the absence of quoted market prices or other observable data. The fair value of the Note is estimated based on a qualitative analysis using the most recent observable transaction price and other significant unobservable inputs requiring management judgement.
- (3) In December 2019, one of our subsidiaries entered into an Agreement and Plan of Merger with Scuf Holdings, Inc. and subsidiaries (collectively “SCUF”) and acquired 100% of their equity interests (the “SCUF Acquisition”). The fair value of the SCUF contingent consideration was determined based on the estimates of acquired tax benefits owed to SCUF’s sellers according to the merger agreement, and these estimates represent a level 3 fair value measurement. The \$1.3 million liability as of December 31, 2021 consisted of \$0.3 million based on a contractual amount and the remaining \$1.0 million is subject to update upon filing our tax return for tax year 2021. In March 2022, we paid the \$0.3 million contractual amount, and the remaining \$1.0 million liability as of June 30, 2022 is subject to update upon filing our tax return for tax year 2021.

#### 4. Derivative Financial Instruments

From time to time, we enter into derivative instruments such as foreign currency forward contracts, to minimize the short-term impact of foreign currency exchange rate fluctuations on certain foreign currency denominated assets and liabilities, and interest rate cap contracts, to minimize our exposure to interest rate movements on our variable rate debts. The derivative instruments are recorded at fair value in prepaid expenses and other current assets or other liabilities and accrued expenses on the condensed consolidated balance sheets. We do not designate such instruments as hedges for accounting purposes; accordingly, changes in the value of these contracts are recognized in each reporting period in other (expense) income, net in the condensed consolidated statements of operations. We do not enter into derivative instruments for trading purposes.

The foreign currency forward contracts generally mature within two to four months. The notional principal amount of outstanding foreign exchange forward contracts was \$20.9 million and \$48.6 million as of June 30, 2022 and December 31, 2021, respectively, none of which have been designated as hedging instruments during the periods presented. Total fair value gains (losses) recognized in other (expense) income, net in relation to these derivative instruments was \$2.1 million and \$(0.6) million for the three months ended June 30, 2022 and 2021, respectively, and was \$2.6 million and \$0.1 million for the six months ended June 30, 2022 and 2021, respectively.

#### 5. Business Combinations

##### *iDisplay Acquisition*

On January 1, 2022, we completed the acquisition of a 51% ownership stake in iDisplay (the “*iDisplay Acquisition*”), a leader in electronic development and design specializing in display technology, headquartered in Taiwan.

The fair value consideration for iDisplay was \$36.4 million, including \$21.9 million in cash and the issuance of 690,333 shares of our common stock with a fair value of \$14.5 million at Closing Date. The consideration was reduced for the effective 51% settlement of a pre-existing contractual accounts payable balance owed to iDisplay of \$3.5 million. The iDisplay Acquisition will

allow us to direct the development and integration of iDisplay’s display-based touch-screen technologies into our products for creators, gamers and streamers. iDisplay’s results of operations are fully consolidated with Corsair with effect from January 1, 2022.

The seller of iDisplay (the “iDisplay Seller”) has retained 49% noncontrolling interests in iDisplay. Under the Shareholders Agreement between Corsair and the iDisplay Seller, a put option was provided to the iDisplay Seller and a call option was provided to Corsair for the option to transfer (i) 14% ownership interest in iDisplay to Corsair upon the first anniversary of the Closing and (ii) an additional 15% of ownership interest in iDisplay to Corsair upon the second anniversary of the Closing. Both put and call options expire on January 1, 2025. The exercise price of the put option and the call option is based on multiples of iDisplay’s trailing twelve-month earnings before interest, income tax, depreciation and amortization (“TTM EBITDA”) less any debt. The 29% noncontrolling interests entitled to the put option is considered a redeemable noncontrolling interests. See Note 2, Summary of Significant Accounting Policies – Noncontrolling Interests and Note 16, Redeemable Noncontrolling Interests for more information regarding the redeemable noncontrolling interests.

The fair value of the 49% noncontrolling interests was estimated to be \$29.6 million. The control premium assigned to Corsair’s 51% controlling financial interest was 15%, which resulted in an implied minority discount of 13%. The control premium was based on an analysis considering similar market transactions involving control premiums, as well as factors specific to iDisplay, including its significant customer concentration.

Subsequent to the iDisplay Acquisition Closing Date, we recorded measurement period adjustments which increased goodwill by \$1.0 million, and decreased identifiable intangible assets and deferred liabilities by \$1.1 million and \$0.1 million, respectively. The final allocation of the iDisplay Acquisition purchase consideration to the estimated fair value of the assets acquired and liabilities assumed at the acquisition date is as follows (in thousands):

	<u>Amounts</u>
Cash	\$ 2,330
Accounts receivable	3,382
Inventories	2,772
Prepaid and other assets	424
Operating lease right-of-use asset	360
Property and equipment	277
Identifiable intangible assets	34,200
Goodwill	32,987
<b>Total assets acquired</b>	<b>76,732</b>
Accounts payable	(5,106)
Deferred tax liabilities	(4,561)
Accrued liabilities	(731)
Operating lease liabilities	(360)
<b>Total liabilities assumed</b>	<b>(10,758)</b>
<b>Net assets acquired</b>	<b>65,974</b>
Noncontrolling interests	(29,606)
<b>Fair value of consideration transferred</b>	<b>\$ 36,368</b>
<b>Purchase consideration:</b>	
Cash	\$ 21,864
Corsair common stock	14,504
<b>Fair value of consideration transferred</b>	<b>\$ 36,368</b>

The fair value of certain working capital related items, including accounts receivable, prepaid and other assets, accounts payable and accrued liabilities, as well as the fair value of property and equipment approximated their book values at the date of the iDisplay Acquisition. The fair value of the inventories was estimated by major category, at net realizable value, which we believe approximates the price a market participant could achieve in a current sale. The difference between the fair value of the inventories and the book value recorded by iDisplay on the acquisition date was \$0.3 million, which was recognized in cost of revenue in the consolidated statements of operations upon the sale of the acquired inventory.

The excess of the purchase consideration over the fair value of the identifiable intangible assets and the net tangible assets and liabilities acquired has been estimated to be \$33.0 million, of which \$29.3 million and \$3.7 million are assigned to our gamer and creator peripherals reporting unit and gaming component and systems reporting unit, respectively. We believe goodwill represents the

strengthening of our supply chain with display-based touch-screen technologies into our products for creators, gamers and streamers, and the ability to design and generate new technologies to enhance the features of our products.

A portion of the identifiable intangible assets are not deductible for tax purposes of which \$4.6 million deferred tax liability has been estimated at the date of acquisition for the difference between the book and tax bases of these assets. The goodwill is not deductible for tax purposes.

#### *Valuation of identified intangible assets*

The following table summarizes the valuation of the identifiable intangible assets acquired in the iDisplay Acquisition and the estimate of their respective useful lives as of Closing Date, including subsequent measurement period adjustments:

	<u>Valuation</u> <u>(In thousands)</u>	<u>Useful</u> <u>Life</u> <u>(In years)</u>
Patent portfolio	\$ 5,100	6
Supplier relationships	6,800	6
Developed technology	22,300	6
Total identifiable intangible assets	<u>\$ 34,200</u>	

The fair value of patent portfolio was estimated using the relief from royalty approach and the economic useful life was determined based on the average product life cycle of the products manufactured by iDisplay. The supplier relationships intangible asset represents the value assigned to the relationship iDisplay had established over the years with a broad network of suppliers and OEMs that have been crucial to the quality and magnitude of iDisplay manufacturing capability. The fair value of supplier relationships was estimated using the multi-period excess earnings approach and the economic useful life was determined to be aligned with the estimated useful life of the developed technology acquired from iDisplay. The developed technology intangible asset represents unpatented propriety technologies, such as hardware designs and architectures and process technologies used in the on-going research and design of the products manufactured by iDisplay. The fair value of developed technology was estimated using the income approach and the economic useful life was based on the technology cycle of the products manufactured, as well as the cash flows anticipated over the forecasted periods. The valuations of the intangible assets were calculated with the assistance of a third-party valuation firm. The fair values of these intangibles were valued based on long-term cash flow projections, which we consider to be Level 3 inputs.

These intangibles are being amortized over their estimated useful lives using the straight-line method of amortization, which reflects the pattern in which the economic benefits of the intangible asset are consumed. Amortization of patent portfolio and supplier relationships is included in cost of revenue and amortization of developed technology is included in product development expense in our condensed consolidated statements of operations.

#### *Acquisition-related costs*

We incurred acquisition-related costs of approximately \$0.1 million and \$0.6 million for the three and six months ended June 30, 2022, respectively, and \$0.6 million for the year ended December 31, 2021. These costs are recorded in sales, general and administrative expenses in the consolidated statement of operations.

#### *Unaudited Pro-forma Financial Information*

Pro forma financial information is not included because the effects of the acquisition are not material to our consolidated statements of operations for 2021.

## **6. Goodwill and Intangible Assets**

### ***Goodwill***

The following table summarizes the changes in the carrying amount of goodwill by reportable segment (in thousands):

	Gaming Components and Systems	Gamer and Creator Peripherals	Total
<b>Balance as of December 31, 2021</b>	\$ 145,310	\$ 171,744	\$ 317,054
Addition from iDisplay Acquisition	3,485	28,485	31,970
Measurement period adjustments	235	782	1,017
Effect of foreign currency exchange rates	(83)	(2,051)	(2,134)
<b>Balance as of June 30, 2022</b>	<u>\$ 148,947</u>	<u>\$ 198,960</u>	<u>\$ 347,907</u>

### *Intangible assets, net*

The following table is a summary of intangible assets, net (in thousands):

	June 30, 2022			December 31, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 54,386	\$ 19,815	\$ 34,571	\$ 32,086	\$ 14,922	\$ 17,164
Trade name	29,904	5,851	24,053	30,665	4,942	25,723
Customer relationships	218,544	105,910	112,634	218,566	94,910	123,656
Patent portfolio	33,400	9,607	23,793	31,481	8,196	23,285
Non-competition agreements	2,521	2,445	76	2,521	2,193	328
Supplier relationships	6,328	527	5,801	—	—	—
Total finite-life intangibles	<u>345,083</u>	<u>144,155</u>	<u>200,928</u>	<u>315,319</u>	<u>125,163</u>	<u>190,156</u>
Indefinite life trade name	35,430	—	35,430	35,430	—	35,430
Other	123	—	123	123	—	123
Total intangible assets	<u>\$ 380,636</u>	<u>\$ 144,155</u>	<u>\$ 236,481</u>	<u>\$ 350,872</u>	<u>\$ 125,163</u>	<u>\$ 225,709</u>

In the year after an identified intangible asset becomes fully amortized, we remove the fully amortized balances from the gross asset and accumulated amortization amounts from the table above.

The estimated future amortization expense of intangible assets as of June 30, 2022 is as follows (in thousands):

	Amounts
Remainder of 2022	\$ 19,647
2023	37,971
2024	36,521
2025	36,221
2026	32,855
Thereafter	37,713
Total	<u>\$ 200,928</u>

## 7. Balance Sheet Components

The following tables present the components of certain balance sheet amounts (in thousands):

### *Cash and Restricted Cash*

	June 30, 2022	December 31, 2021
Cash	\$ 35,851	\$ 62,415
Restricted cash—short term	2,620	2,734
Restricted cash—noncurrent	231	231
Total cash and restricted cash	<u>\$ 38,702</u>	<u>\$ 65,380</u>



**Accounts Receivable, Net**

	<b>June 30, 2022</b>	<b>December 31, 2021</b>
Accounts receivable	\$ 170,838	\$ 291,816
Allowance for doubtful accounts	(529)	(529)
Accounts receivable, net	<u>\$ 170,309</u>	<u>\$ 291,287</u>

As of June 30, 2022, and December 31, 2021, two customers each represented 10% or more of our consolidated accounts receivable, net.

**Inventories**

	<b>June 30, 2022</b>	<b>December 31, 2021</b>
Raw materials	\$ 69,090	\$ 62,110
Work in progress	7,990	4,931
Finished goods	215,506	231,274
Inventories	<u>\$ 292,586</u>	<u>\$ 298,315</u>

**Property and Equipment, Net**

	<b>June 30, 2022</b>	<b>December 31, 2021</b>
Manufacturing equipment	\$ 28,334	\$ 26,094
Computer equipment, software and office equipment	9,889	9,407
Furniture and fixtures	4,846	5,154
Leasehold improvements	11,514	4,709
Total property and equipment	\$ 54,583	\$ 45,364
Less: Accumulated depreciation and amortization	(31,985)	(28,545)
Property and equipment, net	<u>\$ 22,598</u>	<u>\$ 16,819</u>

**Other Assets**

	<b>June 30, 2022</b>	<b>December 31, 2021</b>
Right-of-use assets	\$ 45,054	\$ 51,387
Deferred tax asset	17,611	12,737
Other	7,313	7,684
Other assets	<u>\$ 69,978</u>	<u>\$ 71,808</u>

**Other Liabilities and Accrued Expenses**

	<b>June 30, 2022</b>	<b>December 31, 2021</b>
Accrued reserves for customer incentive programs	\$ 50,943	\$ 66,733
Accrued reserves for sales return	30,168	37,166
Accrued payroll and related expense	9,558	20,526
Accrued freight expenses	12,788	18,296
Operating lease liabilities, current	7,830	9,457
Income tax payable	6,314	6,316
Contract liabilities	4,255	6,663
Other	36,440	40,717
Other liabilities and accrued expenses	<u>\$ 158,296</u>	<u>\$ 205,874</u>

### Other Liabilities, Noncurrent

	June 30, 2022	December 31, 2021
Operating lease liabilities, noncurrent	\$ 46,380	\$ 51,153
Other	2,994	2,718
Other liabilities, noncurrent	<u>\$ 49,374</u>	<u>\$ 53,871</u>

### Nonmonetary Transactions

The sales and purchases of inventory with our manufacturers are accounted for as nonmonetary transactions. Upon sale of raw materials to the manufacturer, for the inventories on-hand with the manufacturer where there is an anticipated reciprocal purchase by us, we will record this nonmonetary transaction as prepaid inventories and accrued liabilities. When we transact the reciprocal purchase of inventory from the manufacturer, we will record a payable to the manufacturer at the purchase price, which replaces the initial nonmonetary transaction and inventory will be reflected at carrying value, which includes the costs for the raw materials and the incremental costs charged by the manufacturer for additional work performed on the inventory. In connection with such nonmonetary transactions with our manufacturers, as of June 30, 2022, we recognized \$2.2 million prepaid inventory and \$2.5 million accrued liabilities and as of December 31, 2021, we recognized \$5.0 million prepaid inventory and \$5.4 million accrued liabilities in the condensed consolidated balance sheet.

Because the transactions are nonmonetary, they have not been included in the condensed consolidated statements of cash flows pursuant to ASC 230, *Statement of Cash Flows*.

### 8. Debt

Our debt consisted of the following (in thousands):

	June 30, 2022	December 31, 2021
Term Loan (variable rate) due September 2026	\$ 246,250	\$ 248,750
Debt discount and issuance cost, net of amortization	(1,166)	(1,099)
Total debt	245,084	247,651
Less: debt maturing within one year	4,707	4,753
Long-term debt	<u>\$ 240,377</u>	<u>\$ 242,898</u>

### First Lien Credit and Guaranty Agreement (Extinguished in September 2021)

In August 2017, we entered into a syndicated First Lien Credit and Guaranty Agreement (“*First Lien*”) with various financial institutions. The First Lien originally provided a \$235 million term loan (“*First Lien Term Loan*”) for a business acquisition and to repay existing indebtedness of the acquired company and a \$50 million revolving line-of-credit (“*Revolver*”). The First Lien and the Revolver was to mature on August 28, 2024 and August 28, 2022, respectively. Subsequently, we entered into several amendments to the First Lien and the principal amount of the First Lien Term Loan was increased by \$10 million in 2017 and increased by \$115 million in each of 2018 and 2019, primarily to fund various business acquisitions and operation needs.

The First Lien Term Loan initially carried interest at a rate equal to, at our election, either the (a) greatest of (i) the prime rate, (ii) sum of the Federal Funds Effective Rate plus 0.5%, (iii) one month LIBOR plus 1.0% and (iv) 2%, plus a margin of 3.5%, or (b) the greater of (i) LIBOR and (ii) 1.0%, plus a margin of 4.5%. The Revolver initially bore interest at a rate equal to, at our election, either the (a) greatest of (i) the prime rate, (ii) sum of the Federal Funds Effective Rate plus 0.5%, (iii) one month LIBOR plus 1.0% and (iv) 2%, plus 3.5%, or (b) the greater of (i) LIBOR and (ii) 1.0%, plus a margin of 4.5%. As a result of the First Lien amendment in October 2018, the First Lien term loan and Revolver margin were both changed to range from 2.75% to 3.25% for base rate loans and to range from 3.75% to 4.25% for Eurodollar loans, based on our net leverage ratio.

We may prepay the First Lien Term Loan and the Revolver at any time without premium or penalty other than customary LIBOR breakage. In the six months ended June 30, 2021, with the excess cash on hand, we made voluntary prepayment of \$53 million, and accordingly we recorded losses on extinguishment of debt of \$0.8 million. The First Lien Term Loan was subsequently fully prepaid with the proceeds from the Term Loan (defined below) on September 3, 2021, and as a result, all obligations and covenants thereunder were terminated.

The effective interest rate inclusive of the debt discount and debt issuance costs for the First Lien, was approximately 6.46% and 6.45% for the three and six months ended June 30, 2021, respectively.

### ***Credit Agreement***

On September 3, 2021, we entered into a new Credit Agreement (“*Credit Agreement*”) which provides for a \$100.0 million five-year revolving credit facility (“*Revolving Facility*”) and a \$250.0 million five-year term loan facility (“*Term Loan*”), with each maturing in September 2026. The Credit Agreement also permits, subject to conditions stated therein, additional incremental facilities in a maximum aggregate principal amount not to exceed \$250.0 million. We may prepay the Term Loan and the Revolving Facility at any time without premium or penalty.

The credit facilities under the Credit Agreement replaced our senior credit facilities under the First Lien Credit and Guaranty Agreement. The net proceeds from borrowings under the Credit Agreement of \$248.5 million (net of \$1.5 million of debt discount) were used to repay all amounts outstanding under the First Lien Term Loan on September 3, 2021.

The Term Loan and Revolving Facility under the Credit Agreement initially carried interest at the Company’s election at either (a) LIBOR plus a percentage spread (ranging from 1.25% to 2.0%) based on our total net leverage ratio, or (b) the base rate (described in the Credit Agreement as the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50% and (iii) one-month LIBOR plus 1.0%) plus a percentage spread (ranging from 0.25% to 1.0%) based on our net leverage ratio.

The Credit Agreement contains covenants with which we must comply during the term of the agreement, which we believe are ordinary and standard for agreements of this nature. The financial covenants include the maintenance of a maximum Consolidated Total Net Leverage Ratio of 3.0 to 1.0 and a minimum Consolidated Interest Coverage Ratio of 3.0 to 1.0 (as defined in the Credit Agreement). The Credit Agreement also includes events of default customary for facilities of this nature and upon the occurrence of such events of default, among other things, all outstanding amounts under the Credit Agreement may be accelerated and/or the lenders’ commitments terminated. In addition, upon the occurrence of certain events of default, the interest on the Term loan and Revolving Facility can be increased by 2.0%.

Our obligations under the Credit Agreement are guaranteed by substantially all of our U.S. subsidiaries and secured by a security interest in substantially all assets of the Company and the guarantor subsidiaries, subject to certain exceptions detailed in the Credit Agreement and related ancillary documentation.

On June 30, 2022, we entered into a First Amendment of the Credit Agreement (“*First Amendment*”), which among other changes resulted in the Bloomberg Short-Term Bank Yield Index rate (“*BSBY*”) being utilized as a replacement rate for LIBOR. Consequently, following the First Amendment, the Term Loan and Revolving Facility will each bear interest at the Company’s election at either (a) BSBY plus a percentage spread (ranging from 1.25% to 2.25%) based on our total net leverage ratio, or (b) the base rate as the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50% and (iii) one-month BSBY plus 1.0%) plus a percentage spread (ranging from 0.25% to 1.25%) based on our net leverage ratio. In addition, pursuant to the First Amendment, the maximum permitted Consolidated Total Net Leverage Ratio (as defined in the Credit Agreement) was also amended to increase to 3.50 to 1.0 between the quarters ending September 30, 2022 through and including March 31, 2023, and such ratio will revert to 3.00 to 1.00 from the quarter ended June 30, 2023 and each quarter thereafter, provided that, upon the occurrence of a Qualified Acquisition (as defined in the Credit Agreement), such ratio can be increased to 3.50 to 1.0 temporarily provided all the requirements set forth in the Credit Agreement are met.

## [Table of Contents](#)

The First Amendment was accounted for as a debt modification.

As of June 30, 2022, we were not in default under the Credit Agreement.

As of June 30, 2022 and December 31, 2021, we had no outstanding balance under the Revolving Facility.

The carrying value of our Term Loan was \$245.1 million and \$247.7 million as of June 30, 2022 and December 31, 2021, respectively. The estimated fair value of the Term Loan as of June 30, 2022, which we have classified as a Level 2 financial instrument, was approximately \$240.4 million.

The effective interest rate inclusive of the debt discount and debt issuance costs was approximately 2.13% and 1.81% for the three and six months ended June 30, 2022, respectively.

The following table summarizes the interest expense recognized for all periods presented (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
<b>First Lien Guaranty Agreement:</b>				
Contractual interest expense for term loan	\$ —	\$ 3,537	\$ —	\$ 7,419
Amortization of debt discount and issuance cost	—	515	—	1,052
Loss on debt extinguishment	—	358	—	797
<b>Credit Agreement:</b>				
Contractual interest expense for term loan	1,370	—	2,235	—
Contractual interest expense for revolving facility	201	—	475	—
Amortization of debt discount and issuance cost	86	—	172	—
Other	19	98	73	186
Total interest expense recognized	<u>\$ 1,676</u>	<u>\$ 4,508</u>	<u>\$ 2,955</u>	<u>\$ 9,454</u>

The estimated future principal payments under our total long-term debt as of June 30, 2022 are as follows (in thousands):

	<u>Amounts</u>
Remainder of 2022	\$ 2,500
2023	6,875
2024	12,500
2025	12,500
2026	211,875
Thereafter	—
Total debt	<u>\$ 246,250</u>

## 9. Commitments and Contingencies

### *Product Warranties*

Changes in our warranty obligations were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Beginning of the period	\$ 5,392	\$ 6,001	\$ 5,655	\$ 5,865
Warranty provision related to products shipped	1,167	1,660	2,465	3,533
Deductions for warranty claims processed	(1,794)	(1,912)	(3,355)	(3,649)
End of period	<u>\$ 4,765</u>	<u>\$ 5,749</u>	<u>\$ 4,765</u>	<u>\$ 5,749</u>

### ***Unconditional Purchase Obligations***

Our long-term non-cancelable purchase commitments consist primarily of multi-year contractual arrangements relating to subscriptions for cloud computing hosting arrangements for various reporting applications and the related support services. Long-term non-cancelable purchase commitments as of June 30, 2022 were as follows (in thousands):

	<u>Amounts</u>
Remainder of 2022	\$ 887
2023	1,761
2024	1,787
2025	316
2026	—
Thereafter	—
Total	<u>\$ 4,751</u>

Our total long term non-cancelable purchase commitments outstanding as of December 31, 2021 were \$7.1 million.

### ***Letters of Credit***

The total letters of credit outstanding, in aggregate, was \$0.5 million as of June 30, 2022 and December 31, 2021. No amounts have been drawn upon the letters of credit for all periods presented.

### ***Legal Proceedings***

We may from time to time be involved in various claims and legal proceedings of a character normally incident to the ordinary course of business. Litigation can be expensive and disruptive to normal business operations, and the results of complex legal proceedings are difficult to predict, and our view of these matters may change in the future as the litigation and events related thereto unfold. We expense legal fees as incurred and we record a provision for contingent losses when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Based on currently available information, we believe there are no existing claims or proceedings that are likely to have a material adverse effect on our financial position, or the outcome of these matters is currently not determinable. An unfavorable outcome to any legal matter, if material, could have an adverse effect on our operations or financial position, liquidity of results of operations.

### ***Indemnification***

In the ordinary course of business, we may provide indemnifications of varying scope and terms with respect to certain transactions. We have entered into indemnification agreements with directors and certain officers and employees that will require Corsair, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. No demands have been made upon Corsair to provide indemnification under such agreements, and thus, there are no claims that we are aware of that could have a material effect on our condensed consolidated balance sheets, statements of operations, or statements of cash flows. We currently have directors' and officers' insurance.

## **10. Stockholders' Equity**

On September 25, 2020, in connection with the closing of the IPO, we filed an Amended and Restated Certificate of Incorporation which increased the authorized shares of common stock for issuance to 300,000,000 and authorized 5,000,000 shares of preferred stock, with a par value of \$0.0001 per share, for issuance. There were no shares of preferred stock outstanding as of June 30, 2022 and December 31, 2021.

## 11. Equity Incentive Plans and Stock-Based Compensation

As of June 30, 2022, we have two active equity incentive plans: the 2020 Equity Incentive Plan and the Employee Stock Purchase Plan (“ESPP”).

The following table summarizes stock-based compensation expense by line item in the accompanying condensed consolidated statements of operations (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Cost of revenue	\$ 380	\$ 293	\$ 665	\$ 474
Sales, general and administrative	4,861	3,600	9,013	6,172
Product development	850	875	1,560	1,198
Stock-based compensation expense, net of amounts capitalized (1)	\$ 6,091	\$ 4,768	\$ 11,238	\$ 7,844
Income tax benefits related to stock-based compensation expense	\$ 59	\$ 4,236	\$ 370	\$ 5,155

(1) Total stock-based compensation expense capitalized in inventory and as cloud computing arrangement (“CCA”) implementation costs were not material for each of the periods presented.

The following table summarizes by type of grant, the total unrecognized stock-based compensation expense and the remaining period over which such expense is expected to be recognized (in thousands, except number of years):

	June 30, 2022	
	Unrecognized Expense	Remaining weighted average period (In years)
Stock Options	\$ 27,741	2.3
RSUs	31,170	3.2
Total unrecognized stock-based compensation expense	\$ 58,911	

The total intrinsic value of options exercised was \$2.4 million and \$4.0 million for the three and six months ended June 30, 2022, respectively, and was \$49.3 million and \$53.7 million for the three and six months ended June 30, 2021, respectively. The total fair value of RSUs vested was \$0.4 million and \$2.9 million for the three and six months ended June 30, 2022, there were immaterial RSUs vested for the three and six months ended June 30, 2021.

## 12. Net Income (Loss) Per Share

The following table summarizes the calculation of basic and diluted net income (loss) per share (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
<b>Numerator</b>				
Net income (loss)	\$ (51,839)	\$ 27,745	\$ (55,119)	\$ 74,468
Less: Net income (loss) attributable to noncontrolling interests	174	—	(233)	—
Net income (loss) attributable to Corsair Gaming, Inc.	(52,013)	27,745	(54,886)	74,468
Change in redemption value of redeemable noncontrolling interests	(7,379)	—	(9,640)	—
Net income (loss) attributable to common stockholders of Corsair Gaming, Inc.	<u>\$ (59,392)</u>	<u>\$ 27,745</u>	<u>\$ (64,526)</u>	<u>\$ 74,468</u>
<b>Denominator</b>				
Basic weighted-average shares outstanding	95,467	92,792	95,372	92,374
Effect of dilutive securities (1)	—	7,282	—	7,771
Total diluted weighted-average shares outstanding	<u>95,467</u>	<u>100,074</u>	<u>95,372</u>	<u>100,145</u>
<b>Net income (loss) per share attributable to common stockholders of Corsair Gaming, Inc.</b>				
Basic	<u>\$ (0.62)</u>	<u>\$ 0.30</u>	<u>\$ (0.68)</u>	<u>\$ 0.81</u>
Diluted	<u>\$ (0.62)</u>	<u>\$ 0.28</u>	<u>\$ (0.68)</u>	<u>\$ 0.74</u>
Anti-dilutive potential common shares (1)	11,198	781	10,791	575

(1) Potential common share equivalents were not included in the calculation of diluted net income (loss) per share as the effect would have been anti-dilutive.

## 13. Income Taxes

The table below presents our income (loss) before income taxes, income tax benefit (expense) and effective income tax rates for all periods presented (in thousands, except percentages):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Income (loss) before income taxes	\$ (56,003)	\$ 30,030	\$ (60,266)	\$ 89,948
Income tax benefit (expense)	4,164	(2,285)	5,147	(15,480)
Effective tax rate	7.4%	7.6%	8.5%	17.2%

We are subject to income taxes in the United States and foreign jurisdictions in which we do business. These foreign jurisdictions have statutory tax rates different from those in the United States. Accordingly, our effective tax rates will vary depending on the relative proportion of foreign to United States income, the utilization of net operating loss and tax credit carry forwards, changes in geographic mix of income and expense, and changes in management's assessment of matters such as the ability to realize deferred tax assets, and changes in tax laws.

Our effective tax rates were consistent for the three months ended June 30, 2022 and 2021, at 7.4% and 7.6%, respectively. Our effective tax rates were 8.5% and 17.2% for the six months ended June 30, 2022 and 2021, respectively. The decrease in effective tax rates was primarily due to an increase in losses in our foreign subsidiaries offset by a decrease in excess tax benefits from stock-based compensation recognized in the six months ended June 30, 2022, as compared to the same period last year. In addition, in the six months ended June 30, 2021, we recorded a \$1.4 million one-time tax expense related to the remeasurement of our United Kingdom deferred tax liabilities as a result of the enactment of the increased corporate tax rate in the United Kingdom.

Unrecognized tax benefits were \$3.7 million and \$3.8 million as of June 30, 2022 and December 31, 2021, respectively, and if recognized, would favorably affect the effective income tax rate in future periods.

#### 14. Segment and Geographic Information

We have two reportable segments:

- **Gamer and Creator Peripherals.** Includes our high-performance gaming keyboards, mice, headsets, controllers, and our streaming gear, which includes capture cards, Stream Decks, USB microphones, our Facecam streaming camera, studio accessories and EpocCam software, as well as coaching and training services, among others.
- **Gaming Components and Systems.** Includes our high-performance power supply units, or PSUs, cooling solutions, computer cases, DRAM modules, as well as high-end prebuilt and custom-built gaming PCs, and gaming monitor, among others.

The segments are defined as those operations our chief operating decision maker (“CODM”) regularly reviews to analyze performance and allocate resources. Our CODM is determined to be Corsair’s Chief Executive Officer. The results of the reportable segments are derived directly from our reporting system and are based on the methods of internal reporting which are not necessarily in conformity with GAAP. Management measures net revenue and gross profit to evaluate the performance of, and allocate resources to, each of the segments.

The table below summarizes the financial information for each reportable segment (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
<b>Net revenue</b>				
Gamer and Creator Peripherals	\$ 88,989	\$ 155,157	\$ 223,137	\$ 331,069
Gaming Components and Systems	194,919	317,746	441,462	671,248
Total net revenue	<u>\$ 283,908</u>	<u>\$ 472,903</u>	<u>\$ 664,599</u>	<u>\$ 1,002,317</u>
<b>Gross Profit</b>				
Gamer and Creator Peripherals	\$ 10,558	\$ 54,634	\$ 53,615	\$ 123,500
Gaming Components and Systems	25,901	75,717	73,600	167,179
Total gross profit	<u>\$ 36,459</u>	<u>\$ 130,351</u>	<u>\$ 127,215</u>	<u>\$ 290,679</u>

The CODM manages assets on a total company basis, not by operating segments; therefore, asset information and capital expenditures by operating segments are not presented.

#### Geographic Information

The following table summarizes our net revenue by geographic region based on the location of the customer (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
<b>Net revenue</b>				
Americas	\$ 149,633	\$ 191,070	\$ 342,457	\$ 417,458
Europe and Middle East	71,231	187,708	193,429	413,202
Asia Pacific	63,044	94,125	128,713	171,657
Total net revenue	<u>\$ 283,908</u>	<u>\$ 472,903</u>	<u>\$ 664,599</u>	<u>\$ 1,002,317</u>

Revenues from sales to customers in the United States represented 45.0% and 35.1% for the three months ended June 30, 2022 and 2021, respectively, and represented 44.2% and 35.7% for the six months ended June 30, 2022 and 2021, respectively. Revenue from sales to customers in the United Kingdom were below 10.0% for the three and six months ended June 30, 2022 but represented 10.0% and 10.1% for the three and six months ended June 30, 2021, respectively. No other countries besides the United States and the United Kingdom represented 10% or more of total net revenue for each of the periods presented.

One customer represented at least 10% of total net revenue for each of the periods presented.



**15. Redeemable Noncontrolling Interests**

Under the Shareholders Agreement between Corsair and the iDisplay Seller a put option was provided to the iDisplay Seller to transfer to Corsair (i) 14% of their ownership interest in iDisplay upon the first anniversary of the Closing Date of the iDisplay Acquisition, and (ii) an additional 15% of their ownership interest in iDisplay upon the second anniversary of the Closing Date. The put option will expire after January 1, 2025. The exercise price of the put option is based on multiples of iDisplay's historical TTM EBITDA less any debt. The put option makes this portion of the noncontrolling interests redeemable and therefore, the redeemable noncontrolling interests are classified as temporary equity and carried at redemption value on our condensed consolidated balance sheet. The change in redemption value is recognized through retained earnings.

As of the Closing Date of the iDisplay Acquisition, the fair value of the total 49% noncontrolling interests in iDisplay has been estimated to be \$29.6 million, of which \$17.5 million is attributable to the 29% redeemable noncontrolling interests and classified within temporary equity and \$12.1 million is attributable to the 20% noncontrolling interests classified within permanent equity on our condensed consolidated balance sheets.

The following table presents the changes in redeemable noncontrolling interests for the period presented (in thousands):

	<u>Three Months Ended</u> <u>June 30, 2022</u>	<u>Six Months Ended</u> <u>June 30, 2022</u>
Balance at beginning of period	\$ 19,424	\$ —
Redeemable noncontrolling interests in iDisplay estimated at fair value at Closing Date	—	17,522
Net income (loss) attributable to redeemable noncontrolling interests	103	(138)
Other comprehensive loss attributable to redeemable noncontrolling interests	(157)	(275)
Change in redemption value of redeemable noncontrolling interests (1)	7,379	9,640
Balance at end of period (2)	<u>\$ 26,749</u>	<u>\$ 26,749</u>

(1) These amounts represent \$7.4 million and \$9.6 million increase in redemption value over the carrying value for the three and six months ended June 30, 2022 respectively. These amounts were recorded as an offset to retained earnings and increased the net loss used in the calculation of net loss per share attributable for these periods.

(2) The redeemable noncontrolling interest balance at June 30, 2022 included the amount calculated based on multiples of iDisplay's historical TTM EBITDA less any debt and the accrual for dividends declared in June 2022 based on the Shareholders Agreement.

**Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.****MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS**

*You should read the following discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed in the section titled “Risk Factors” and in other parts of this Quarterly Report on Form 10-Q.*

**Overview**

We are a leading global provider and innovator of high-performance gear for gamers, streamers and content creators, many of which build their own PCs using our components. Our gear is sold to end users worldwide through either our retail channel or our direct-to-consumer channel. In our retail channel, we distribute our gear either directly to the retailer, such as Amazon and Best Buy, or through key distributors. In the last two years, we have entered into three large new markets: microphones and cameras for content creators and gaming monitors for both gamers and content creators. We continue to optimize the value of existing products and to introduce new products to the market driving growth. Over the longer term, we believe we will be able to continue to grow in new markets as well as the markets that we participate in through innovation and leading technologies and entry into new categories via organic growth or acquisition.

We group our products into two categories (operating segments):

- **Gamer and creator peripherals.** Includes our high-performance gaming keyboards, mice, headsets, controllers, and streaming gear, which includes capture cards, Stream Decks, USB microphones, our Facecam streaming camera, studio accessories, and EpocCam software, as well as coaching and training services, among others.
- **Gaming components and systems.** Includes our high-performance power supply units, or PSUs, cooling solutions, computer cases, and DRAM modules, as well as high-end prebuilt and custom-built gaming PCs, and gaming monitor, among others.

Since 2018, we have completed eight acquisitions, including our acquisition of 51% of the share capital of iDisplay, a leader in electronic development and design specializing in display technology, in January 2022. The iDisplay acquisition will allow us to direct the development and integration of iDisplay’s display-based touch-screen technologies into our products for creators, gamers and streamers. iDisplay’s results of operations are fully consolidated with Corsair with effect from January 1, 2022.

**Summary of Financial Results**

Our revenue for the three months ended June 30, 2022 decreased by \$189.0 million or 40.0%, compared to the same period last year. Our revenue for the six months ended June 30, 2022 decreased by \$337.7 million or 33.7%, compared to the same period last year. The decrease in revenue for the three- and six-month periods was primarily driven by the continuing slowdown in consumer spending in Europe mainly related to the Russia and Ukraine war and the unexpected high inflationary pressure on worldwide consumer spending, and also partly due to the easing of the COVID-19 shelter in-place restrictions which resulted in decreased demand for our gear as consumers sought alternative forms of entertainment. The decrease in demand for our gear in the first half of 2022, particularly in the second quarter of 2022, resulted in a buildup of inventory in our warehouses as well as in the retail channel, causing our channel partners to delay ordering while they clear excess inventory. Our gross margins decreased from 27.6% to 12.8% for the three months ended June 30, 2022 and from 29.0% to 19.1% for the six months ended June 30, 2022, in each case, as compared to the same periods last year. The decrease in our gross margins for the three- and six-month periods were primarily due to increased freight and logistics costs and higher promotional activities, as well as higher inventory impairment and related charges in connection with our inventory rationalization plan to align our inventory balance with the current revenue outlook at end of June 2022.

As of June 30, 2022 we had cash and restricted cash, in the aggregate of \$38.7 million and \$246.3 million Term Loan outstanding (face value). We generated \$10.1 million cash from operations in the six months ended June 30, 2022.

**Key Factors Affecting Our Business**

Our results of operations and financial condition are affected by numerous factors, including those discussed in the section titled “Risk Factors” in Part II, Item 1A of this Quarterly Report on Form 10-Q and those described below.

### ***Impact of Industry Trends***

Our results of operations and financial condition are impacted by industry trends in the gaming market, including:

- *Increasing gaming engagement.* We believe that gaming's increasing time share of global entertainment consumption will drive continued growth in spending on both games and gaming gear. Gaming continues to become increasingly social and streaming viewership more widely adopted along with increasing numbers of content creators. We believe this trend will continue and we are well positioned to serve the streaming market with best-in-class tools for content creation.
- *Introduction of new high-performance computing hardware and sophisticated games.* We believe that the introduction and availability of more powerful CPUs and GPUs that place increased demands on other system components, such as memory, power supply or cooling, has a significant effect on increasing the demand for our gear. The shortage of reasonably priced GPUs since the second half of 2021 has had a negative impact to our gaming component revenue. We believe the availability of reasonably priced GPUs will improve in the second half of 2022. In addition, we believe that our business success depends in part on the introduction and success of games with sophisticated graphics that place increasing demands on system processing speed and capacity and therefore require more powerful CPUs or GPUs, which in turn drives demand for our high-performance gaming components and systems, such as PSUs and cooling solutions, and our gaming PC memory. As a result, our operating results may be materially affected by the timing of, and the rate at which computer hardware companies introduce, new and enhanced CPUs and GPUs, as well as the availability and pricing of such CPUs and GPUs, the timing of, and rate at which computer game companies and developers introduce, sophisticated new and improved games that require increasingly high levels of system and graphics processing power, and whether these new products and games are widely accepted by gamers.

### ***Impact of Product Mix***

Our gamer and creator peripherals segment has a higher gross margin than our gaming components and systems segment. As a result, our overall gross margin is affected by changes in product mix. External factors can have an impact on our product mix, such as popular game releases that can increase sales of peripherals and availability of new CPUs and GPUs that can impact component sales. In addition, within our gamer and creator peripherals and gaming components and systems segments, gross margin varies between products, and significant shifts in product mix within either segment may also significantly impact our overall gross margin.

### ***Impact of Customer Concentration***

We operate a global sales network that consists primarily of retailers (including eRetailers), as well as distributors we use to access certain retailers. Further, a limited number of retailers and distributors represent a significant portion of our net revenue, with eRetailer Amazon accounting for 27.45% and 24.6% of our net revenue for the six months ended June 30, 2022 and 2021, respectively, and sales to our ten largest customers accounting for approximately 51.96% and 50.0% of our net revenue for the six months ended June 30, 2022 and 2021, respectively. Our customers typically do not enter into long-term agreements to purchase our gear but instead enter into purchase orders with us. As a result of this concentration and the lack of long-term agreements with our customers, a primary driver of our net revenue and operating performance is maintaining good relationships with these retailers and distributors. To help maintain good relationships, we implement initiatives such as our updated packaging design that helps eRetailers such as Amazon process our packages more efficiently. Further, given our global operations, a significant percentage of our expenses relate to shipping costs. Our ability to effectively optimize these shipping expenses, for example utilizing expensive shipping options such as air freight for smaller packages and more urgent deliveries and more cost-efficient options, such as train or boat, for other shipments, has an impact on our expenses and results of operations.

### ***Impact of New Product Introductions***

Gamers demand new technology and product features, and we expect our ability to accurately anticipate and meet these demands will be one of the main drivers for any future sales growth and market share expansion. Since 2021, we had several product introductions that had a favorable impact on our net revenue and operating results, such as the introduction of our new K70 Pro RGB keyboard and Elgato's new accessories including our new Facecam and next generation of HD60 X Capture card, Corsair DDR5 memory and new high-performance gaming controllers including SCUF Reflex, Reflex Pro and Reflex FPS, among others. However, there can be no assurance that our new product introductions will have a favorable impact on our operating results or that customers will choose our new gear over those of our competitors.

### ***Impact of Seasonal Sales Trends***

Since 2020, our revenue seasonality has been impacted positively and negatively, and thus has not followed historic patterns, by external events, such as shelter-in-place restrictions, global supply chain and logistics issues and availability of affordable GPUs, primarily caused by the COVID-19 pandemic. Historically, prior to 2020, we have experienced and expect to continue to experience seasonal fluctuations in sales due to the buying patterns of our customers and spending patterns of gamers. Our net revenue has

generally been lowest in the first and second calendar quarters due to lower consumer demand following the fourth quarter holiday season and because of the decline in sales that typically occurs in anticipation of the introduction of new or enhanced CPUs, GPUs, and other computer hardware products, which usually take place in the second calendar quarter and which tend to drive sales in the following two quarters. Further, our net revenue tends to be higher in the third and fourth calendar quarter due to seasonal sales such as “Black Friday,” “Cyber Monday” and “Singles Day” in China, as retailers tend to make purchases in advance of these sales, and our sales also tend to be higher in the fourth quarter due to the introduction of new consoles and high-profile games in connection with the holiday season. As a consequence of seasonality, our net revenue for the second calendar quarter is generally the lowest of the year followed by the first calendar quarter. Historical seasonal patterns may not continue in the future and have been impacted, and may be further impacted in the future, by increasing supply constraints, GPU shortages, shifts in customer behavior and the evolving impacts of the COVID-19 pandemic.

#### ***Impact of Fluctuations in Currency Exchange Rates***

We are subject to inherent risks attributed to operating in a global economy. Some of our international sales are denominated in foreign currencies and any unfavorable movement in the exchange rate between U.S. dollars and the currencies in which we conduct sales in foreign countries, in particular the Euro and the British Pound could have an adverse impact on our net revenue. In addition, we generally pay our employees located outside the United States in the local currency, with a significant portion of those payments being made in Taiwan dollars and Euros. Additionally, as a result of our foreign sales and operations, we have other expenses, assets and liabilities that are denominated in foreign currencies, in particular the Chinese Yuan, Euro and British Pound.

#### ***Impact of Fluctuations in Integrated Circuits Pricing***

Integrated circuits, or ICs, account for most of the cost of producing our high-performance memory products. IC prices are subject to pricing fluctuations which can affect the average sales prices of memory modules, and thus impact our net revenue, and can have an effect on gross margins. The impact on net revenues can be significant as our high-performance memory products, included within our gaming components and systems segment, represent a significant portion of our net revenue.

#### ***Impact of Macroeconomic Conditions, COVID-19 Pandemic and Supply Chain Challenges***

In February 2022, Russia invaded Ukraine resulting in, among other things, broad economic sanctions being imposed on Russia, which has further increased existing global supply chain, logistics, and inflationary challenges. Although our business in Russia and Ukraine was not material to our results, we believe the war has degraded the consumer sentiment in Europe and coupled with the unexpected inflationary pressures which dampened consumer spending, attributed to the 40.0% and 33.7% decrease in our net revenue in the three and six months ended June 30, 2022, respectively, compared to the same periods last year.

Due to the COVID-19 pandemic, there has been and will continue to be uncertainty and disruption in the global economy and financial markets. Since early 2020, we have experienced an increase in demand for our gear as more people were under shelter-in-place restrictions, which we believe have limited people’s access to alternative forms of entertainment and social interaction, and thus have increased the demand for home entertainment and connecting with others through content creation. In contrast, as the COVID-19 pandemic subsides, it has resulted in shelter-in-place and other similar restrictions being eased. Such easing of restrictions has resulted in consumers returning to other alternative forms of entertainment and interaction. This in turn has resulted in a decline in demand for our products since the second half of 2021.

In addition, we have experienced and continue to experience supply chain challenges, including longer production and shipping times, and increased shipping and logistics costs, each of which has negatively impacted our gross margins, as well as the need to purchase long-lead time items ahead of demand due to supply constraints.

The extent of the impact of macroeconomic conditions, the COVID-19 pandemic, geopolitical tensions and supply chain challenges on our business, sales, results of operations, cash flows and financial condition will depend on future developments, which are not within our control and are highly uncertain and cannot be predicted. We will continue to evaluate these risks and uncertainties and further our mitigation plans.

Our inventory impairment and related charges increased by \$22.7 million in the three months ended June 30, 2022, as compared to the same period last year, primarily resulting from our inventory valuation assessment and our plan to rationalize our inventory level to align with the current revenue outlook at end of June 2022. In addition, in the three months ended June 30, 2022, in order to align our expenses with the expected revenue level, we implemented a restructuring plan and terminated 92 employees worldwide, resulting in approximately \$1.5 million of restructuring costs, primarily consisting of severance and benefits. Our restructuring plan has been substantially completed as of June 2022.

## **Components of our Operating Results**

### ***Net Revenue***

We generate materially all of our net revenue from the sale of gamer and creator peripherals and gaming components and systems to retailers, including online retailers, gamers and distributors worldwide. Our revenue is recognized net of allowances for returns, discounts, sales incentives and any taxes collected from customers.

### ***Cost of Revenue***

Cost of revenue consists primarily of product costs, including costs of contract manufacturers, inbound freight costs from manufacturers to our distribution hubs as well as inter-hub shipments, cost of materials and overhead, duties and tariffs, warranty replacement cost to process and rework returned items, depreciation of tooling equipment, warehousing costs, excess and obsolete inventory write-downs, and certain allocated costs related to facilities and information technology, or IT, and personnel-related expenses and other operating expenses related to supply chain logistics.

### ***Operating Expenses***

Operating expenses consist of product development and sales, general and administrative expenses.

*Sales, general and administrative.* Sales, general and administrative, or SG&A, expenses represent the largest component of our operating expenses and consist of distribution costs, sales, marketing and other general and administrative costs. Distribution costs include outbound freight and the costs to operate our distribution hubs. Sales and marketing costs relate to the costs to operate our global sales force that works in conjunction with our channel partners, gaming team and event sponsorships, advertising and marketing promotions of our products and services, costs of maintaining our web store and credit card processing fees related to sales on our webstore, personnel-related cost and allocated overhead costs. General and administrative costs consist primarily of personnel-related expenses for our finance, legal, human resources, IT and administrative personnel, as well as the costs of professional services related to these functions and allocated overhead costs.

We expect our total sales, general and administrative expenses to increase in absolute dollars as we continue to actively promote and distribute a higher volume of our products and also due to the anticipated growth of our business and related infrastructure, including increases in legal, accounting, insurance, compliance, investor relations and other consulting costs.

*Product development.* Product development costs are generally expensed as incurred. Product development costs consist primarily of the costs associated with the design and testing of new products and improvements to existing products. These costs relate primarily to compensation of personnel and consultants involved with product design, definition, compatibility testing and qualification, as well as depreciation costs of equipment used, prototype material costs and allocated overhead costs.

We expect our product development expenses to increase in absolute dollars as we continue to make significant investments in developing new products and enhancing existing products.

### ***Interest Expense***

Interest expense consists of interest associated with our debt financing arrangements, including our revolving line of credit, amortization of debt issuance costs and debt discounts, loss from debt extinguishment, consisting of the write-off of unamortized debt discount and fees associated with the prepayment of our term loans.

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

Other (expense) income, net consists primarily of our foreign currency exchange gains and losses relating to transactions and remeasurement of asset and liability balances denominated in foreign currencies. We expect our foreign currency gains and losses to continue to fluctuate in the future due to changes in foreign currency exchange rates.

### ***Income Tax Expense***

We are subject to income taxes in the United States and foreign jurisdictions in which we do business. These foreign jurisdictions have statutory tax rates different from those in the United States. Accordingly, our effective tax rates will vary depending on the relative proportion of foreign to United States income, the utilization of foreign tax credits and changes in tax laws. Deferred tax assets are reduced through the establishment of a valuation allowance, if, based upon available evidence, it is determined that it is more likely than not that the deferred tax assets will not be realized.

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the tax and financial reporting bases of our assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in future years in which those temporary differences are expected to be recovered or settled.

### *Net Income (Loss) Attributable to Noncontrolling Interests*

Net income (loss) attributable to noncontrolling interests represents the share of the net income (loss) of iDisplay attributable to the 49% ownership interest of iDisplay not acquired by Corsair.

### **Results of Operations**

The following tables set forth the components of our condensed consolidated statements of operations, in dollars (thousands) and as a percentage of total net revenue, for each of the periods presented.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net revenue	\$ 283,908	\$ 472,903	\$ 664,599	\$ 1,002,317
Cost of revenue	247,449	342,552	537,384	711,638
Gross profit	36,459	130,351	127,215	290,679
Operating expenses:				
Sales, general and administrative	73,393	80,169	149,524	158,022
Product development	18,026	15,469	35,136	30,655
Total operating expenses	91,419	95,638	184,660	188,677
Operating income (loss)	(54,960)	34,713	(57,445)	102,002
Other (expense) income:				
Interest expense	(1,676)	(4,508)	(2,955)	(9,454)
Other income (expense), net	633	(175)	134	(2,600)
Total other expense, net	(1,043)	(4,683)	(2,821)	(12,054)
Income (loss) before income taxes	(56,003)	30,030	(60,266)	89,948
Income tax benefit (expense)	4,164	(2,285)	5,147	(15,480)
Net income (loss)	(51,839)	27,745	\$ (55,119)	\$ 74,468
Less: Net income (loss) attributable to noncontrolling interests	174	—	(233)	—
Net income (loss) attributable to Corsair Gaming, Inc.	\$ (52,013)	\$ 27,745	\$ (54,886)	\$ 74,468

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net revenue	100.0%	100.0%	100.0%	100.0%
Cost of revenue	87.2	72.4	80.9	71.0
Gross profit	12.8	27.6	19.1	29.0
Operating expenses:				
Sales, general and administrative	25.9	17.0	22.5	15.8
Product development	6.3	3.4	5.3	3.1
Total operating expenses	32.2	20.4	27.8	18.8
Operating income (loss)	(19.4)	7.2	(8.6)	10.2
Other (expense) income:				
Interest expense	(0.6)	(1.0)	(0.4)	(0.9)
Other income (expense), net	0.2	(0.0)	0.0	(0.3)
Total other expense, net	(0.4)	(1.0)	(0.4)	(1.2)
Income (loss) before income taxes	(19.8)	6.2	(9.1)	9.0
Income tax benefit (expense)	1.5	(0.5)	0.8	(1.5)
Net income (loss)	(18.3)	5.7	(0.1)	0.1
Less: Net income (loss) attributable to noncontrolling interests	0.1	—	(0.0)	—
Net income (loss) attributable to Corsair Gaming, Inc.	(18.4)%	5.7%	(0.0)%	0.1%

## Components of Results of Operations

### Net Revenue

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Net revenue	\$ 283,908	\$ 472,903	\$ 664,599	\$ 1,002,317

Net revenue decreased \$189.0 million, or 40.0%, for the three months ended June 30, 2022 as compared to the same period last year. The decrease was due to a 42.6% decrease in sales for our gamer and creator peripherals segment and a 38.7% decrease in sales for our gaming components and systems segment. Net revenue decreased \$337.7 million, or 33.7%, for the six months ended June 30, 2022 as compared to the same period last year. The decrease was due to a 32.6% decrease in sales for our gamer and creator peripherals segment and a 34.2% decrease in sales for our gaming components and systems segment.

We believe the decrease in net revenue in both segments for the three- and six-month periods was primarily due to consumer consumption in Europe being negatively impacted by the Russia-Ukraine war, coupled with lower consumer discretionary spending due to higher-than-expected inflationary pressures world-wide. The decrease in our net revenue to the Europe and Middle East Region accounted for approximately 62% and 65% of the decline in our total net revenue in the three and six months ended June 30, 2022, respectively. The decrease in our net revenue for the three- and six- month periods was also in part due to a slow-down in demand compared to the same periods last year as a result of the easing of the COVID-19 shelter-in-place restrictions because more other entertainment options began to reopen, starting in the second half of 2021.

### Gross Profit and Gross Margin (defined as gross profit as a percentage of revenue)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Gross profit	\$ 36,459	\$ 130,351	\$ 127,215	\$ 290,679
Gross margin	12.8%	27.6%	19.1%	29.0%

Gross margin decreased by 14.8% for the three months ended June 30, 2022 as compared to the same period last year. This decrease was primarily attributable to an increase in inventory impairment and related charges due to our inventory rationalization plan to align our inventory balance with the current expected revenue level as well as our planned introduction of new replacement products. The gross margin in the three months ended June 30, 2022 was also negatively impacted by an unfavorable shift towards higher mix of net revenue from our lower margin gaming components and systems segment, increased freight and logistics costs largely driven by global shipping and logistics challenges caused by the COVID-19 pandemic, increased promotional activity, as well as increased amortization of intangible assets from our iDisplay acquisition.

Gross margin decreased by 9.9% for the six months ended June 30, 2022 as compared to the same period last year. This decrease was primarily attributable to an increase in inventory impairment and related charges due to our inventory rationalization plan to align our inventory balance with the current expected revenue level as well as our planned introduction of new replacement products. The gross margin in the six months ended June 30, 2022 compared to the same period last year was also negatively impacted by increased freight and logistics costs largely driven by global shipping and logistics challenges caused by the COVID-19 pandemic, increased promotional activity, as well as increased amortization of intangible assets from the iDisplay acquisition.

### ***Sales, General and Administrative (SG&A)***

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Sales, general and administrative	\$ 73,393	\$ 80,169	\$ 149,524	\$ 158,022

SG&A expenses decreased \$6.8 million, or 8.5%, for the three months ended June 30, 2022 as compared to the same period last year. The decrease was primarily due to a \$5.8 million decrease in distribution cost including outbound freight cost due to decreased sales volume, a \$2.3 million decrease in personnel-related costs due to lower bonus expense, a \$1.4 million decrease in marketing and advertising expenses and a \$0.4 million decrease in legal and other professional fees. These decreases were offset partially by a \$3.5 million charge related to the acceleration of the amortization of capitalized cloud computing implementation costs in the three months ended June 30, 2022.

SG&A expenses decreased \$8.5 million, or 5.4%, for the six months ended June 30, 2022 as compared to the same period last year. The decrease was primarily due to a \$5.2 million decrease in distribution cost including outbound freight cost with lower shipment volume, a \$4.7 million decrease in personnel-related costs with lower bonus expense and a \$1.8 million decrease in legal and other professional fees. These decreases were offset partially by a \$3.5 million charge related to the acceleration of the amortization of capitalized cloud computing implementation costs in the six months ended June 30, 2022.

### ***Product Development***

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Product development	\$ 18,026	\$ 15,469	\$ 35,136	\$ 30,655

Product development expenses increased \$2.6 million, or 16.5%, for the three months ended June 30, 2022 as compared to the same period last year. The increase was primarily due to a \$0.9 million increase in amortization of intangible assets acquired in the iDisplay acquisition, a \$0.8 million increase in allocation of corporate IT-related costs and a \$0.5 million increase in consultant and contractor expenses.

Product development expenses increased \$4.5 million, or 14.6%, for the six months ended June 30, 2022 as compared to the same period last year. The increase was primarily due to a \$1.9 million increase in amortization of intangible assets acquired in the iDisplay acquisition, a \$1.1 million increase in allocation of corporate IT-related and facility-related costs, and a \$1.5 million increase in other product development related costs to support our continued innovation and broadening of our product portfolio.



### Interest Expense and Other (Expense) Income, Net

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Interest expense	\$ (1,676)	\$ (4,508)	\$ (2,955)	\$ (9,454)
Other (expense) income, net	633	(175)	134	(2,600)

Interest expense decreased \$2.8 million, or 62.8%, for the three months ended June 30, 2022 as compared to the same period last year. Interest expenses decreased \$6.5 million, or 68.7%, for the six months ended June 30, 2022 as compared to the same period last year. The decrease in interest expense in both the three- and six-month periods was primarily due to a lower principal balance on our Term Loan executed in September 2021 which replaced our First Lien Term Loan and lower interest rate compared to the same periods last year.

Other (expense) income, net is primarily comprised of foreign exchange gains and losses on cash, accounts receivable and intercompany balances denominated in currencies other than the functional currencies of our subsidiaries. Our foreign currency exposure is primarily driven by fluctuations in the foreign currency exchanges rates of the Euro, British Pound and the Chinese Yuan.

### Income Tax Benefit (Expense)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(In thousands)			
Income (loss) before income taxes	\$ (56,003)	\$ 30,030	\$ (60,266)	\$ 89,948
Income tax benefit (expense)	4,164	(2,285)	5,147	(15,480)
Effective tax rate	7.4%	7.6%	8.5%	17.2%

We are subject to income taxes in the United States and foreign jurisdictions in which we do business. These foreign jurisdictions have statutory tax rates different from those in the United States. Accordingly, our effective tax rates will vary depending on the relative proportion of foreign to United States income, the utilization of net operating loss and tax credit carry forwards, changes in geographic mix of income and expense, and changes in management's assessment of matters such as the ability to realize deferred tax assets, and changes in tax laws.

Our effective tax rates were consistent for the three months ended June 30, 2022 and 2021, at 7.4% and 7.6%, respectively. Our effective tax rates were 8.5% and 17.2% for the six months ended June 30, 2022 and 2021, respectively. The decrease in effective tax rates was primarily due to an increase in losses in our foreign subsidiaries offset by a decrease in excess tax benefits from stock-based compensation recognized in the six months ended June 30, 2022, as compared to the same period last year. In addition, in the six months ended June 30, 2021, we recorded a \$1.4 million one-time tax expense related to the remeasurement of our United Kingdom deferred tax liabilities as a result of the enactment of the increased corporate tax rate in the United Kingdom.

### Segment Results

#### Segment Net Revenue

The following table sets forth our net revenue by segment expressed both in dollars (thousands) and as a percentage of net revenue:

	Three Months Ended June 30,				Six Months Ended June 30,			
	2022		2021		2022		2021	
Gamer and Creator Peripherals Segment	\$ 88,989	31.3%	\$ 155,157	32.8%	\$ 223,137	33.6%	\$ 331,069	33.0%
Gaming Components and Systems Segment								
Memory Products	99,120	34.9	158,735	33.6	231,274	34.8	320,599	32.0
Other Component Products	95,799	33.7	159,011	33.6	210,188	31.6	350,649	35.0
	194,919	68.7	317,746	67.2	441,462	66.4	671,248	67.0
Total Net Revenue	\$ 283,908	100.0%	\$ 472,903	100.0%	\$ 664,599	100.0%	\$ 1,002,317	100.0%

*Gamer and Creator Peripherals Segment*

Net revenue of the gamer and creator peripherals segment decreased \$66.2 million, or 42.6%, for the three months ended June 30, 2022 as compared to the same period last year, and decreased \$107.9 million, or 32.6%, for the six months ended June 30, 2022 as compared to the same period last year. The decrease in net revenue was driven primarily by the decline in consumer demand in Europe due to the war between Russia and Ukraine as well as the inflationary economic pressures. The decrease in net revenue was also partly due to the easing of the COVID-19 shelter-in-place restriction because more entertainment options began to reopen, starting in the second half of 2021

*Gaming Components and Systems Segment*

Net revenue of the gaming components and systems segment decreased \$122.8 million, or 38.7%, for the three months ended June 30, 2022 as compared to the same period last year, and decreased \$229.8 million, or 34.2%, for the six months ended June 30, 2022 as compared to the same period last year. The decrease was primarily driven by the decline in consumer demand in Europe due to the war between Russia and Ukraine as well as the inflationary economic pressures. The decrease in net revenue was also attributable to the shortage of reasonably priced GPUs which curtailed the demand for new PC builds and its components, as well as supply and logistics constraints caused by the COVID-19 pandemic. We believe the availability of reasonably priced GPUs will improve in the second half of 2022.

**Segment Gross Profit and Gross Margin**

The following table sets forth our gross profit expressed in dollars (thousands) and gross margin by segment:

	<u>Three Months Ended June 30,</u>				<u>Six Months Ended June 30,</u>			
	<u>2022</u>		<u>2021</u>		<u>2022</u>		<u>2021</u>	
Gamer and Creator Peripherals Segment	\$ 10,558	11.9%	\$ 54,634	35.2%	\$ 53,615	24.0%	\$ 123,500	37.3%
Gaming Components and Systems Segment								
Memory Products	8,885	9.0	28,126	17.7	29,950	13.0	62,049	19.4
Other Component Products	17,016	17.8	47,591	29.9	43,650	20.8	105,130	30.0
	<u>25,901</u>	<u>13.3</u>	<u>75,717</u>	<u>23.8</u>	<u>73,600</u>	<u>16.7</u>	<u>167,179</u>	<u>24.9</u>
Total Gross Profit	<u>\$ 36,459</u>	<u>12.8%</u>	<u>\$ 130,351</u>	<u>27.6%</u>	<u>\$ 127,215</u>	<u>19.1%</u>	<u>\$ 290,679</u>	<u>29.0%</u>

*Gamer and Creator Peripherals Segment*

The gross margin of the gamer and creator peripherals segment decreased in the three and six months ended June 30, 2022 by 23.3% and 13.3%, respectively, as compared to the same periods last year. The decrease was primarily attributable to an increase in inventory impairment and related charges due to our inventory rationalization plan to align our inventory balance with the current expected revenue level and our planned introduction of new replacement products, as well as increased logistics costs, increased promotional activity, and increased amortization of intangible assets from the iDisplay acquisition.

*Gaming Components and Systems Segment*

The gross margin of the gaming components and systems segment decreased in the three and six months ended June 30, 2022 by 10.5% and 8.2%, respectively, as compared to the same periods last year. The decrease was primarily attributable to an increase in inventory impairment and related charges due to our inventory rationalization plan to align our inventory balance with the current expected revenue level and our planned introduction of new replacement products, as well as increased logistics costs, increased promotional activity and downward pressure on pricing for our memory products.

**Liquidity and Capital Resources**

Our principal sources of liquidity have been the payments received from customers purchasing our products and the borrowings under our Credit Agreement (defined below). Our principal uses of cash generally will include purchases of inventory, payroll and other operating expenses related to the development and marketing of our products, capital expenditure, repayments of debt and related interest, income tax payments, continued investments in businesses and technology, and selective mergers and acquisitions.

As of June 30, 2022, we had cash and restricted cash, in aggregate of \$38.7 million, including \$10.7 million held by our foreign subsidiaries. Amounts held outside of the United States are generally utilized to support our non-U.S. liquidity needs. Repatriations of amounts held outside the United States generally will not be taxable from a U.S. federal tax perspective, but may be subject to state income or foreign withholding tax. We do not expect restrictions or potential taxes incurred on repatriation of amounts held outside of the United States to have a material effect on our overall liquidity, financial condition or results of operations.

We believe that the anticipated cash flows from operations based on our current business outlook, combined with our current levels of cash balances at June 30, 2022, supplemented with the borrowings under our Revolving Credit Facility will be sufficient to fund our principal uses of cash for at least the next twelve months. In the longer term, liquidity will depend to a great extent on our future revenues and our ability to appropriately manage our costs based on the demand for our products. We may require additional funding and need or choose to raise the required funds through borrowings or public or private sales of debt or equity securities. The sale of additional equity would result in additional dilution to our stockholders. The incurrence of debt financing would result in debt service obligations and the instruments governing such debt could provide for operating and financial covenants that would restrict our operations. There can be no assurance that any such equity or debt financing will be available on favorable terms, or at all.

### **Liquidity**

The following table summarizes our cash flows for the periods presented (in thousands):

	Six Months Ended June 30,	
	2022	2021
Net cash provided by (used in):		
Operating activities	\$ 10,051	\$ 59,397
Investing activities	(32,550)	(10,931)
Financing activities	(677)	(43,541)

#### *Cash Flows from Operating Activities*

Net cash provided by operating activities for the six months ended June 30, 2022 was \$10.1 million and consisted of \$32.9 million net cash inflow from changes in our net operating assets and liabilities, offset partially by our net loss of \$55.1 million, which included non-cash adjustments of \$32.2 million. The net cash inflow from changes in our net operating assets and liabilities was primarily related to a decrease in accounts receivable due to decrease in revenue and a decrease in inventories mainly from increase in inventory impairment charges due to our inventory rationalization plan to align our inventory balance with the current expected revenue level as well as our planned introduction of new replacement products. These net cash inflows was partially offset by an increase in prepaid and other assets, as well as a decrease in accounts payable due to timing of payments and a decrease in other liabilities and accrued expenses mainly due to lower accrual for sales returns and customer incentives and bonus expense. The non-cash adjustments consisted primarily of amortization, depreciation, stock-based compensation expense, and changes in deferred tax assets.

Net cash provided by operating activities for the six months ended June 30, 2021 was \$59.4 million and consisted of net income of \$74.5 million, which included non-cash adjustments of \$27.9 million, and was partially offset by \$43.0 million from changes in our net operating assets and liabilities. The non-cash adjustments consisted primarily of amortization, depreciation, stock-based compensation expense, loss on debt extinguishment and amortization of debt issuance costs and change in deferred tax assets. The net cash outflow from changes in our net operating assets and liabilities was primarily related to increase in inventory, prepaid expenses and other assets, and a decrease in accounts payable mainly due to timing of payments. The net cash outflow was partially offset by a decrease in accounts receivable and an increase in other liabilities and accrued expenses.

#### *Cash Flows from Investing Activities*

Cash used in investing activities was \$32.6 million for the six months ended June 30, 2022 and primarily consisted of \$19.5 million for the iDisplay acquisition (net of cash acquired), \$11.9 million capital expenditure including renovation and furnishing of our new headquarters in Milpitas, California, as well as purchases of equipment and software, and \$1.0 million for the investment in an available-for-sale convertible note.

Cash used in investing activities was \$10.9 million for the six months ended June 30, 2021 and consisted of \$4.9 million for the purchase of capital equipment and software, \$4.3 million for the payment of deferred and contingent consideration related to the Origin acquisition, and \$1.7 million for the acquisition of an immaterial business.

### *Cash Flows from Financing Activities*

Cash used in financing activities was \$0.7 million for the six months ended June 30, 2022 and consisted of \$2.8 million repayment of debt and debt issuance costs, \$1.0 million payment of taxes related to net share settlement of equity awards, and \$0.4 million payment of contingent consideration from previous acquisitions, partially offset by \$3.5 million proceeds received from the issuance of shares through the employee equity incentive plans. During the six months ended June 30, 2022, we also borrowed \$403.0 million from our revolving credit facility to fund our operations and the full amount was repaid within the same period.

Cash used in financing activities was \$43.5 million for the six months ended June 30, 2021 and consisted of \$53.0 million repayment of debt, partially offset by \$9.5 million proceeds received from the issuance of shares through the employee equity incentive plans.

### **Capital Resources**

#### *Credit Agreement (Term Loan and Revolving Credit Facility)*

On September 3, 2021, we refinanced the First Lien Credit and Guaranty Agreement with a new Credit Agreement (“Credit Agreement”). The new Credit Agreement provides for a total commitment of \$350 million, consisting of a \$100 million revolving credit facility (“Revolving Credit Facility”) and a \$250 million term loan facility (“Term Loan”). The net proceeds from borrowings under the Term Loan of \$248.5 million (net of \$1.5 million of debt discount) were used to repay all amounts outstanding under the First Lien Term Loan on September 3, 2021.

The Credit Agreement is available for a period of five years, maturing September 2026, and provides for additional incremental facilities up to a maximum aggregate principal amount of \$250.0 million, subject to the satisfaction of certain conditions. We may prepay the Term Loan and the Revolving Facility at any time without premium or penalty.

The Term Loan and Revolving Credit Facility under the Credit Agreement initially carried interest at our election at either (a) LIBOR plus a percentage spread (ranging from 1.25% to 2.0%) based on our total net leverage ratio, or (b) the base rate (described in the Credit Agreement as the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50% and (iii) one-month LIBOR plus 1.0%) plus a percentage spread (ranging from 0.25% to 1.0%) based on our total net leverage ratio.

The Credit Agreement contains covenants with which we must comply during the term of the agreement, which we believe are ordinary and standard for agreements of this nature, including the maintenance of a maximum Consolidated Total Net Leverage Ratio of 3.0 to 1.0 and a minimum Consolidated Interest Coverage Ratio of 3.0 to 1.0 (as defined in our Credit Agreement). The Credit Agreement also includes events of default customary for facilities of this nature and upon the occurrence of such events of default, among other things, all outstanding amounts under the Credit Agreement may be accelerated and/or the lenders’ commitments terminated. In addition, upon the occurrence of certain events of default, the interest on the Term loan and Revolving Credit Facility can increase by 2.0%.

Our obligations under the Credit Agreement are guaranteed by substantially all of our U.S. subsidiaries and secured by a security interest in substantially all assets of the Company and the guarantor subsidiaries, subject to certain exceptions detailed in the Credit Agreement and related ancillary documentation.

On June 30, 2022, we entered into a First Amendment of the Credit Agreement (“*First Amendment*”) which among other changes resulted in the Bloomberg Short-Term Bank Yield Index rate (“*BSBY*”) being utilized as a replacement rate for LIBOR. Consequently, following the First Amendment, the Term Loan and Revolving Facility will each bear interest at our election at either (a) BSBY plus a percentage spread (ranging from 1.25% to 2.25%) based on our total net leverage ratio, or (b) the base rate as the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50% and (iii) one-month BSBY plus 1.0%) plus a percentage spread (ranging from 0.25% to 1.25%) based on our net leverage ratio. In addition, pursuant to the First Amendment, the maximum permitted Consolidated Total Net Leverage Ratio (as defined in the Credit Agreement) was also amended to increase to 3.50 to 1.0 between the quarters ending September 30, 2022 through and including March 31, 2023, and such ratio will revert to 3.00 to 1.00 from the quarter ended June 30, 2023 and each quarter thereafter, provided that, upon the occurrence of a Qualified Acquisition (as defined in the Credit Agreement), such ratio can be increased to 3.50 to 1.0 temporarily provided all the requirements set forth in the Credit Agreement are met.

As of June 30, 2022, we were not in default under the Credit Agreement. Total principal outstanding of the Term Loan was \$246.3 million and the available and uncommitted capacity under the Revolving Credit Facility was \$99.5 million.

**Contractual Obligations and Other Commitments**

The following table summarizes our contractual cash and other obligations as of June 30, 2022 (in thousands):

	Payments Due by Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Debt principal and interest payments (1)	\$ 288,696	\$ 16,198	\$ 43,653	\$ 228,845	\$ —
Inventory-related purchase obligations (2)	107,837	107,837	—	—	—
Operating lease obligations (3)	66,816	9,086	18,562	11,617	27,551
Other purchase obligations (4)	30,926	27,721	3,205	—	—
Contingent consideration in connection with a business acquisition	954	954	—	—	—
<b>Total</b>	<b>\$ 495,229</b>	<b>\$ 161,796</b>	<b>\$ 65,420</b>	<b>\$ 240,462</b>	<b>\$ 27,551</b>

- (1) Amounts represent the principal cash payments as of June 30, 2022 of our Term Loan based on the repayment schedule according to the Credit Agreement and the expected interest payments associated with the Term Loan. See Note 8 "Debt" to our consolidated financial statements for more information.
- (2) Amounts represent an estimate of purchase obligations related to inventory.
- (3) Amounts represent contractual obligations from our operating leases for offices and warehouse spaces.
- (4) Amounts represent non-cancelable obligations related to capital expenditures, software licenses, marketing and other activities.

As of June 30, 2022, we had \$2.4 million in non-current income tax payable, including interest and penalties, related to our income tax liability for uncertain tax positions. At this time, we are unable to make a reasonably reliable estimate of the timing of payments in individual years in connection with these tax liabilities; therefore, such amounts are not included in the contractual cash obligation table above.

**Critical Accounting Policies and Estimates**

A critical accounting policy is defined as one that has both a material impact on our financial condition and results of operations and requires us to make difficult, complex and/or subjective judgments, often as a result of the need to make estimates about matters that are inherently uncertain. Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), which requires us to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the condensed consolidated financial statements, as well as the reported amounts of revenue and expenses during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe to be applicable and we evaluate them on an ongoing basis to ensure they remain reasonable under current conditions. Actual results may differ significantly from those estimates, which could have a material impact on our business, results of operations, and financial condition.

Other than the new items discussed in Note 2 of our condensed consolidated financial statements, there have been no material changes to our critical accounting policies and estimates during the six months ended June 30, 2022 as compared to the critical accounting policies and estimates described in our Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on March 1, 2022.

**Recent Accounting Pronouncements**

Refer to Note 2 to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q for recent accounting pronouncements adopted and to be adopted.

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

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates.

#### ***Interest Rate Risk***

As of June 30, 2022, we had cash and restricted cash of \$38.7 million, which consisted primarily of bank deposits. Our cash is held for working capital purposes.

As of June 30, 2022, under the Credit Agreement, we had \$246.3 million Term Loan outstanding (face value), and the Term Loan bears variable market rates, primarily BSBY. Refer to Note 8 “Debt - Credit Agreement” for additional information on the Credit Agreement. A significant change in these market rates may adversely affect our operating results. As of June 30, 2022, a hypothetical 100 basis point change in interest rates would result in a change to annual interest expense by approximately \$2.5 million.

#### ***Foreign Currency Risk***

Approximately 16.2% of our net revenue for the six months ended June 30, 2022 was denominated in foreign currencies, primarily Euro and British Pound. Any unfavorable movement in the exchange rate between U.S. dollars and the currencies in which we conduct sales in foreign countries could have an adverse impact on our net revenue and gross margins as we may have to adjust local currency product pricing due to competitive pressures if there is significant volatility in foreign currency exchange rates. Our operating expenses are denominated in the currencies of the countries in which our operations are located, which are primarily in the United States, Europe, China and Taiwan. Our operating results and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates.

We enter into forward currency contracts to reduce the short-term effects of currency fluctuations on Euro, British Pound, and Chinese Yuan denominated cash, accounts receivable, and intercompany receivable and payable balances. These forward contracts generally mature within two to three months, and we do not enter into foreign currency forward contracts for trading purposes. The outstanding notional principal amount was \$20.9 million and \$48.6 million as of June 30, 2022 and December 31, 2021, respectively. The gains or losses on these contracts are recognized in earnings based on the changes in fair value.

The impact of changes in foreign currency rates, including the gains or (losses) on the forward currency contracts, recognized in other (expense) income, net was \$(0.1) million and \$(2.6) million for the six months ended June 30, 2022 and 2021, respectively. A hypothetical ten percent change in exchange rates between foreign currencies and the U.S. dollar would increase or decrease our gains or losses on foreign currency exchange of approximately \$0.2 million in our consolidated financial statements for the six months ended June 30, 2022.

**Item 4. Controls and Procedures.**

***Limitations on Effectiveness of Controls and Procedures***

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurances. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but there can be no assurance that such improvements will be sufficient to provide us with effective internal control over financial reporting.

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

Our management, with the participation of our principal executive officer and our principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q.

Based on this evaluation, our chief executive officer and chief financial officer concluded that, as of June 30, 2022, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

***Changes in Internal Control Over Financial Reporting***

There were no changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

We may from time to time be involved in various legal proceedings of a character normally incident to the ordinary course of our business. Although the outcome of any pending matters, and the amount, if any, of our ultimate liability and any other forms of remedies with respect to these matters, cannot be determined or predicted with certainty, we do not believe that the ultimate outcome of these matters will have a material adverse effect on our business, results of operations or financial condition.

### Item 1A.

#### Risk Factor Summary

*Below is a summary of the principal factors that make an investment in our common stock speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below under the heading “Risk Factors” and should be carefully considered, together with other information in this Quarterly Report on Form 10-Q and our other filings with the Securities and Exchange Commission, or the SEC, before making investment decisions regarding our common stock.*

- Our competitive position and success in the market depend to a significant degree upon our ability to build and maintain the strength of our brand among gaming enthusiasts and any failure to build and maintain our brand may seriously harm our business.
- Our success and growth depend on our ability to continuously develop and successfully market new gear and improvements. If we are unable to do so, demand for our current gear may decline and new gear we introduce may not be successful.
- We depend upon the introduction and success of new third-party high-performance computer hardware, particularly graphics processing units, or GPUs, and central processing units, or CPUs, and sophisticated new video games to drive sales of our gear. If newly introduced GPUs, CPUs and sophisticated video games are not successful, if the rate at which those products are introduced declines or if such products are not readily available, it may seriously harm our business.
- We face intense competition, and if we do not compete effectively, we could lose market share, demand for our gear could decline and our business may be seriously harmed.
- If the gaming industry, including streaming and esports, does not grow as expected or declines, our business could be seriously harmed.
- If we lose or are unable to attract and retain key management, our ability to compete could be seriously harmed and our financial performance could suffer.
- Currency exchange rate fluctuations could result in our gear becoming relatively more expensive to our overseas customers or increase our manufacturing costs, each of which may seriously harm our business.
- Total unit shipments of our gear tend to be higher during the third and fourth quarters of the year. As a result, our sales are subject to seasonal fluctuations, which may seriously harm our business.
- The coronavirus outbreak has had, and could continue to have, a materially disruptive effect on our business.
- The ongoing war between Russia and Ukraine could adversely affect our business, financial condition and results of operations.
- We are controlled by a single stockholder, whose interest in our business may be different than yours.
- We are a “controlled company” within the meaning of the Nasdaq Global Select Market, rules and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.

#### Risk Factors

*Our business involves significant risks, some of which are described below. You should consider carefully the risks and uncertainties described below, together with all of the other information contained in this Quarterly Report on Form 10-Q such as “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial*



statements and related notes. If any of the following risks actually occurs, our business, reputation, financial condition, results of operations, revenue and future prospects could be seriously harmed. In such event, the market price of our common stock could decline and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. This Quarterly Report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this Quarterly Report on Form 10-Q. Unless otherwise indicated, references to our business being seriously harmed in these risk factors and elsewhere will include harm to our business, reputation, financial condition, results of operations, revenue and future prospects.

## Risks Related to Our Business

***Our competitive position and success in the market depend to a significant degree upon our ability to build and maintain the strength of our brands among gaming enthusiasts and streamers, and any failure to build and maintain our brands may seriously harm our business.***

We regard our brands as a valuable asset, and we consider it essential to both maintaining and strengthening our brands that we be perceived by current and prospective customers as a leading supplier of cutting-edge, high-performance gear for gaming and streaming. This requires that we constantly innovate by introducing new and enhanced gear that achieves significant levels of acceptance among gamers. We also need to continue to invest in, and devote substantial resources to, advertising, marketing and other efforts to create and maintain brand recognition and loyalty among our retailer customers, distributors and gamers. However, product development, marketing and other brand promotion activities may not yield increased net revenue and, even if they do, any increased net revenue may not offset the expenses incurred in building our brands. Further, certain marketing efforts such as sponsorship of esports athletes, content creators or events could become prohibitively expensive, and as a result these marketing initiatives may no longer be feasible.

If we fail to build and maintain our brands, or if we incur substantial expenses in an unsuccessful attempt to build and maintain our brands, our business may be harmed. Our brands may also be damaged by events such as product recalls, perceived declines in quality or reliability, product shortages, damaging action or conduct of our sponsored esports athletes or content creators and other events, some of which are beyond our control.

***Our success and growth depend on our ability to continuously develop and successfully market new gear and improvements. If we are unable to do so, demand for our current gear may decline and new gear we introduce may not be successful.***

The gear we sell, which includes gamer and creator peripherals and gaming components and systems, is characterized by short product life cycles, frequent new product introductions, rapidly changing technology and evolving industry standards. In addition, average selling prices of some of our gear tend to decline as the gear matures, and we expect this trend to continue. As a result, we must continually anticipate and respond to changing gamer requirements, innovate in our current and emerging categories of gear, introduce new gear and enhance existing gear in a timely and efficient manner in order to remain competitive and execute our growth strategy.

We believe that the success of our gear depends to a significant degree on our ability to identify new features or category opportunities, anticipate technological developments and market trends and distinguish our gear from those of our competitors. In order to further grow our business, we also will need to quickly develop, manufacture and ship innovative and reliable new gear and enhancements to our existing gear in a cost-effective and timely manner to take advantage of developments in enabling technologies and the introduction of new computer hardware, such as new generations of GPUs and CPUs, and computer games, all of which drive demand for our gear. Further, our growth depends in part on our ability to introduce and successfully market new gear and categories of gear. For example, in the last 24 months, we entered into three large new markets, namely the microphones and cameras markets for content creators and the gaming monitors market for both gamers and content creators, and in the future, we intend to introduce other gear designed to appeal to these markets. To the extent we do so, we will likely encounter competition from large, well-known consumer electronics and peripherals companies. Some of these companies have significantly greater financial, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. We cannot predict whether we will be successful in developing or marketing new gear and categories of gear and, if we fail to do so, our business may be seriously harmed.

In addition, we implemented a work from home policy for many of our employees as a result of the COVID-19 coronavirus outbreak, which may have a substantial impact on attendance, morale and productivity, disrupt access to facilities, equipment,

networks, corporate systems, books and records and may add additional expenses and strain on our business. The duration and extent of the impact from the coronavirus outbreak on our business depends on future developments that cannot be accurately predicted at this time, such as the severity and transmission rate of the virus, the extent and effectiveness of containment actions and the impact of these and other factors on our employees. If a substantial number of our employees continue to work from home, it could negatively impact new gear and improvements and potentially result in delays or releasing significant updates.

If we do not execute on these factors successfully, demand for our current gear may decline and any new gear that we may introduce may not gain widespread acceptance. If this were to occur, our business may be seriously harmed. In addition, if we do not continue to distinguish our gear through distinctive, technologically advanced features and designs, as well as continue to build and strengthen our brand recognition and our access to distribution channels, our business may be seriously harmed

***We depend upon the introduction and success of new third-party high-performance computer hardware, particularly GPUs and CPUs, and sophisticated new video games to drive sales of our gear. If newly introduced GPUs, CPUs and sophisticated video games are not successful, if the rate at which those products are introduced declines, or if they are not readily available, it may seriously harm our business.***

We believe that the introduction of more powerful GPUs, CPUs and similar computer hardware that place increased demands on other system components, such as memory, PSUs or cooling, has a significant effect on the demand for our gear. The manufacturers of those products are large, public, independent companies that we do not influence or control. As a result, our business results can be materially affected by the frequency with which new high-performance hardware products are introduced by these independent third parties, whether these products achieve widespread acceptance among gamers, whether such products are readily available at affordable prices and whether additional memory, enhanced PSUs or cooling solutions, new computer cases or other peripheral devices are necessary to support those products. Although we believe that, historically, new generations of high-performance GPUs and CPUs have positively affected the demand for our gear, there can be no assurance that this will be the case in the future. For example, the introduction of a new generation of highly efficient GPUs and CPUs that require less power or that generate less heat than prior generations may reduce the demand for both our power supply units and cooling solutions. In the past, semiconductor and computer hardware companies have typically introduced new products annually, generally in the second calendar quarter, which has tended to drive our sales in the following two quarters. If computer hardware companies do not continue to regularly introduce new and enhanced GPUs, CPUs and other products that place increasing demands on system memory and processing speed, require larger power supply units or cooling solutions or that otherwise drive demand for computer cases and other peripherals, or if gamers do not accept those products, our business may be seriously harmed.

We also believe that sales of our gear are driven by conditions in the computer gaming industry. In particular, we believe that our business depends on the introduction and success of computer games with sophisticated graphics that place greater demands on system processing speed and capacity and therefore require more powerful GPUs or CPUs, which in turn drives demand for our DRAM modules, PSUs, cooling systems and other components and peripherals. Likewise, we believe that the continued introduction and market acceptance of new or enhanced versions of computer games helps sustain consumer interest in computer gaming generally. The demand for our gear would likely decline, perhaps substantially, if computer game companies and developers do not introduce and successfully market sophisticated new and improved games that require increasingly high levels of system and graphics processing power on an ongoing basis or if demand for computer games among computer gaming enthusiasts or conditions in the computer gaming industry deteriorate for any reason. As a result, our sales and other operating results fluctuate due to conditions in the market for computer games, and downturns in this market may seriously harm our business.

***We face intense competition, and if we do not compete effectively, we could lose market share, demand for our gear could decline and our business may be seriously harmed.***

We face intense competition in the markets for all of our gear. We operate in markets that are characterized by rapid technological change, constant price pressure, rapid product obsolescence, evolving industry standards and new demands for features and performance. We experience aggressive price competition and other promotional activities by competitors, including in response to declines in consumer demand and excess product supply or as competitors seek to gain market share.

In addition, because of the continuing convergence of the markets for computing devices and consumer electronics, we expect greater competition in the future from well-established consumer electronics companies. Many of our current and potential competitors, some of which are large, multi-national businesses, have substantially greater financial, technical, sales, marketing, personnel and other resources and greater brand recognition than we have. Our competitors may be in a stronger position to respond quickly to new technologies and may be able to design, develop, market and sell their products more effectively than we can. In addition, some of our competitors are small or mid-sized specialty companies that can react to changes in industry trends or consumer

preferences or to introduce new or innovative products more quickly than we can. As a result, our product development efforts may not be successful or result in market acceptance of our gear. Our primary competitors include:

*Competitors in the gamer and creator peripherals market.* Our primary competitors in the market for gaming keyboards and mice include Logitech and Razer. Our primary competitors in the market for headset and related audio products include Logitech, Razer and HP through its HyperX brand. Our primary competitors in the gamer and creator streaming gear market include Logitech, following its acquisition of Blue Microphones, and AVerMedia. Our primary competitors in the performance controller market include Microsoft and Logitech.

*Competitors in the gaming components and systems market.* Our primary competitors in the market for PSUs, cooling solutions and computer cases include Cooler Master, NZXT, EVGA, Seasonic and Thermaltake. Our primary competitors in the market for DRAM modules include G.Skill, Kingston and Micron through its Crucial division. Our primary competitors in the market for prebuilt gaming PCs and laptops include Dell through its Alienware brand, HP through its Omen brand, Asus and Razer. Our primary competitors in the market for custom-built gaming PCs and laptops include iBuypower and Cyberpower.

*Competitors in new markets.* We are considering introducing new gear for gamers or streamers and content creators and, to the extent we introduce gear in new categories, we will likely experience substantial competition from additional companies, including large computer gaming and streaming peripherals and consumer electronics companies with global brand recognition and significantly greater resources than ours.

Our ability to compete successfully is fundamental to our success in existing and new markets. We believe that the principal competitive factors in our markets include performance, reliability, brand and associated style and image, time to market with new emerging technologies, early identification of emerging opportunities, interoperability of products and responsive customer support on a worldwide basis. If we do not compete effectively, demand for our gear could decline, our net revenue and gross margin could decrease and we could lose market share, which may seriously harm our business.

Further, our ability to successfully compete depends in large part on our ability to compete on price for our high-performance gear. Much of the gear we sell is priced higher than products offered by our competitors. If gamers or streamers are not willing to pay the higher price point for our gear, we will either need to discount our gear or our sales volume could decrease. In either event, our business could be seriously harmed.

***If gaming, including streaming and esports, does not grow as expected or declines our business could be seriously harmed.***

Over the past three decades, gaming has grown from a relatively niche industry to a significant segment of the global entertainment industry with a wide following across various demographic groups globally. This growth includes, and has been driven by, the rapid expansion of live game streaming by content creators and the growing popularity of professional competitive gaming, also referred to as esports. However, the continued growth of the video gaming industry will depend on numerous factors, many of which are beyond our control, including but not limited to:

- the rate of growth of PCs and gaming consoles or the migration of gamers to mobile devices and tablets away from PCs, which historically have been the core focus of our business;
- the continued growth of streaming, including its popularity among fans and aspiring content creators and how it impacts their desire to purchase high-performance gaming and streaming gear;
- the continued growth of esports, including its increasing popularity among fans and amateur esports athletes and how it impacts their desire to purchase high-performance gaming gear;
- general economic conditions, particularly economic conditions adversely affecting discretionary consumer spending;
- social perceptions of gaming, especially those related to the impact of gaming on health and social development;
- the introduction of legislation or other regulatory restrictions on gaming, such as restrictions addressing violence in video games and addiction to video games, also referred to as Gaming Disorder by the World Health Organization;
- the relative availability and popularity of other forms of entertainment; and
- changes in consumer demographics, tastes and preferences.

We generate a significant portion of our net revenue from gaming-related gear. As a result, any decline or slowdown in the growth of the gaming industry or the declining popularity of the gaming industry could materially and adversely affect our business.

We have no specific plans to attract gamers who use only mobile devices or tablets and we have no plans to develop gear specifically designed for gamers who use mobile devices or tablets. As a result, if gamers migrate to mobile devices or tablets and away from PCs and consoles, our business may be seriously harmed. In addition, there can be no assurance that the active demographics in gaming will continue to buy into and drive the growth in gamer culture and the games industry overall nor can there be any assurance that gaming will expand into new demographics that will drive growth. Further, if gamers' interest in video games is diminished, this may seriously harm our business.

***Our growth prospects are, to a certain extent, connected with the ongoing growth of live game streaming and esports and any reduction in the growth or popularity of live game streaming or esports may seriously harm our business.***

The success of our business depends on live game streaming and esports driving significant growth in the high-performance gaming and content streaming market, which could prompt strong growth in the sales of our gear. However, there are a number of factors which could result in the esports or live game streaming markets having limited or negative impact on our sales and overall growth. These factors include:

- our competitors marketing products that gain broader acceptance among game streamers, esports participants and content creators;
- esports amateurs and/or spectators not purchasing our gear that is utilized by esports athletes and teams or streamers and content creators, including the esports athletes and teams, and streamers we sponsor;
- the popularity of esports games that do not utilize any of our gear, for example games that run on mobile devices or tablets that replace more traditional esports; and
- our research and development and the gear we sell failing to satisfy the increasing high-performance requirements of competitive gamers or streamers.

Further, there are a number of factors which could result in the growth in live game streaming or the esports markets stagnating, or even decreasing. These factors include:

- consumer interest in watching either live or streamed broadcasts of competitors playing video games diminishing or even disappearing;
- regulations limiting the broadcast of live streaming or esports;
- reduced accessibility of streaming and other gaming video content, whether due to platform fragmentation, the erection of paywalls, or otherwise; and
- economics or monetization of esports performing below expectations, ultimately causing a decrease in outside investments in esports.

If one or more of the above factors are realized, our business may be seriously harmed.

***If we lose or are unable to attract and retain key management, our ability to compete could be seriously harmed and our financial performance could suffer.***

Our performance depends to a significant degree upon the contributions of our management team, particularly Andrew J. Paul, our co-founder, Chief Executive Officer and Director. If we lose the services of one or more of our key executives, we may not be able to successfully manage our business, meet competitive challenges or achieve our growth objectives. To the extent that our business grows, we will need to attract and retain additional qualified management personnel in a timely manner, and we may not be able to do so.

***We rely on highly skilled personnel and if we are unable to attract, retain or motivate key personnel or hire qualified personnel our business may be seriously harmed.***

Our performance is largely dependent on the talents and efforts of highly skilled individuals, particularly our marketing personnel, sales force, electrical engineers, mechanical engineers and computer professionals. Our future success depends on our continuing ability to identify, hire, develop, motivate and retain highly skilled personnel and, if we are unable to hire and train a sufficient number of qualified employees for any reason, we may not be able to implement our current initiatives or grow, or our business may contract and we may lose market share. Moreover, certain of our competitors or other technology businesses may seek to hire our employees. There can be no assurance that our stock-based and other compensation will provide adequate incentives to

attract, retain and motivate employees in the future, particularly if the market price of our common stock does not increase or declines. If we do not succeed in attracting, retaining and motivating highly qualified personnel, our business may be seriously harmed. Further, we also face significant competition for employees, particularly in the San Francisco Bay Area where our headquarters are located, and as a result, skilled employees in this competitive geographic location can often command higher compensation and may be difficult to hire. In addition, Russia's invasion of Ukraine, poor relations between the United States and Russia, and sanctions by the United States and the European Union against Russia could have an adverse impact on our research and development efforts as we outsource significant research and development activities to companies in Ukraine.

***Currency exchange rate fluctuations could result in our gear becoming relatively more expensive to our overseas customers or increase our manufacturing costs, each of which may seriously harm our business.***

Our international sales and our operations in foreign countries subject us to risks associated with fluctuating currency exchange rates. Because sales of our gear is denominated primarily in U.S. dollars, an increase in the value of the U.S. dollar relative to the currency used in the countries where our gear is sold may result in an increase in the price of our gear in those countries, which may lead to a reduction in sales. Likewise, because we pay our suppliers and third-party manufacturers, most of which are located outside of the United States, primarily in U.S. dollars, any decline in the value of the U.S. dollar relative to the applicable local currency, such as the Chinese Yuan or the New Taiwan dollar, may cause our suppliers and manufacturers to raise the prices they charge us. In addition, we generally pay our employees located outside the United States in the local currency and, as a result of our foreign sales and operations, we have other expenses, assets and liabilities that are denominated in foreign currencies and changes in the value of the U.S. dollar could result in significant increases in our expenses that may seriously harm our business.

***Total unit shipments of our gear have historically been higher during the third and fourth quarters of the year. As a result, our sales may be subject to seasonal fluctuations, which may seriously harm our business.***

Since 2020, our revenue seasonality has been impacted positively and negatively, and thus has not followed historic patterns, by external events, such as shelter-in-place restrictions, global supply chain and logistics issues and availability of affordable GPUs, primarily caused by the COVID-19 pandemic. Historically, prior to 2020, we have experienced and expect to continue to experience seasonal fluctuations in sales due to the spending patterns of gamers who purchase our gear. Our total unit shipments have generally been lowest in the first and second calendar quarters due to lower sales following the fourth quarter holiday season and because of the decline in sales that typically occurs in anticipation of the introduction of new or enhanced GPUs, CPUs and other computer hardware products, which usually takes place in the second calendar quarter, and which tends to drive sales in the following two quarters. As a consequence of seasonality, our total unit shipments for the second calendar quarter are generally the lowest of the year, followed by total unit shipments for the first calendar quarter. As a result, our total unit shipments are subject to seasonal fluctuations, which may seriously harm our business. Historical seasonal patterns may not continue in the future and have been impacted, and may be further impacted in the future, by increasing supply constraints, GPU shortages, shifts in customer behavior and the evolving impacts of the COVID-19 pandemic.

***Our results of operations are subject to substantial quarterly and annual fluctuations, which may adversely affect the market price of our common stock.***

Our results of operations have in the past fluctuated, sometimes substantially, from period to period, and we expect that these fluctuations will continue. A number of factors, many of which are outside our control, may cause or contribute to significant fluctuations in our quarterly and annual net revenue and other operating results. These fluctuations may make financial planning and forecasting more difficult. In addition, these fluctuations may result in unanticipated decreases in our available cash, which could negatively impact our business. These fluctuations also could both increase the volatility and adversely affect the market price of our common stock. There are numerous factors that may cause or contribute to fluctuations in our operating results. As discussed below, these factors may relate directly to our business or may relate to technological developments and economic conditions generally.

*Factors affecting our business and markets.* Our result of operations may be materially adversely affected by factors that directly affect our business and the competitive conditions in our markets, including the following:

- changes in demand for our lower margin products relative to demand for our higher margin gear;
- introduction or enhancement of products by us and our competitors, and market acceptance of these new or enhanced products;
- loss of significant retail customers, cancellations or reductions of orders and product returns;
- fluctuations in average selling prices of and demand for our gear;

- change in demand for our gear due to our gear having higher price-points than products supplied by our competitors;
- discounts and price reductions offered by our competitors;
- a delay, reduction or cessation of deliveries from one or more of the third parties that manufacture our gear;
- increased costs or shortages of our gear or components used in our gear;
- changes in the frequency with which new high-performance computer hardware, particularly GPUs and CPUs, and sophisticated new computer games that drive demand for additional DRAM modules, higher wattage PSUs, enhanced cooling solutions and peripherals are introduced;
- fluctuations in the available supply of high-performance computer hardware resulting in the increased costs to gamers, which could ultimately lead to decreased demand for our gaming gear, due to factors such as component supply shortages or gamers purchasing GPUs for non-gaming purposes such as cryptocurrency mining;
- the war between Russia and the Ukraine resulting in shipments of resources from these countries being delayed, or even ceasing, which could cause the GPU shortage to last longer as the production of GPUs requires resources that come from these countries such as highly purified neon gas and palladium, of which Ukraine and Russia, respectively, are the world's leading exporters;
- potential changes in trade relations or the implementation of export sanctions, in particular any sanctions between the United States and China;
- unexpected changes in laws, including tax and trade laws, and regulatory requirements;
- delays or problems in our introduction of new gear;
- delays or problems in the shipment or delivery of gear to customers;
- changes in freight costs;
- changes in purchasing patterns by the distributors and retailers to which we sell our gear;
- seasonal electronics product purchasing patterns by our retail and distributor customers, as well as the gamers and streamers that purchase their gear directly from us;
- competitive pressures resulting in, among other things, lower selling prices or loss of market share; and
- cost and adverse outcomes of litigation, governmental proceedings or any proceedings to protect our brand or other intellectual property.

*General economic conditions.* Our business may be materially adversely affected by factors relating to global, national and regional economies, including:

- uncertainty in economic conditions, either globally or in specific countries or regions;
- fluctuations in currency exchange rates;
- outbreaks of pandemics, such as the novel coronavirus;
- the impact of political instability, natural disasters, war and/or events of terrorism, such as the war between Russia and Ukraine, and the corresponding tensions created from such conflict between Russia, the United States and countries in Europe as well as other countries such as China;
- macro-economic fluctuations in the United States and global economies, including those that impact discretionary consumer spending such as may result from the COVID-19 coronavirus outbreak, increased interest rates or increased inflation;
- changes in business cycles that affect the markets in which we sell our gear; and
- the effect of fluctuations in interest rates on consumer disposable income.

*Technological factors.* In addition to technological developments directly relating to our gear, more generalized changes in technology may have a significant effect on our operating results. For example, our business could be seriously harmed by rapid, wholesale changes in technology in or affecting the markets in which we compete or widespread adoption of cloud computing.

One or more of the foregoing or other factors may cause our expenses to be disproportionately higher or lower or may cause our net revenue and other operating results to fluctuate significantly in any particular quarterly or annual period. Our results of operations in one or more future quarters or years may fail to meet the expectations of investment research analysts or investors, which could cause an immediate and significant decline in the market price of our common stock.

***Cloud computing may seriously harm our business.***

Cloud computing refers to a computing environment in which software is run on third-party servers and accessed by end-users over the internet. In a cloud computing environment a user's computer may be a so-called "dumb terminal" with minimal processing power and limited need for high-performance components. Through cloud computing, gamers will be able to access and play graphically sophisticated games that they may not be able to otherwise play on a PC that is not fully equipped with the necessary, and often expensive, hardware. If cloud computing is widely accepted, the demand for high-performance computer gaming hardware products such as the PC high-performance memory, prebuilt and custom gaming PCs and laptops, and other PC gaming components we sell, could diminish significantly. As a result, if cloud computing gaming were to become widely adopted, such adoption could seriously harm our business.

***Conditions in the retail and consumer electronics markets may significantly affect our business and could have an adverse effect on our net revenue.***

We derive most of our revenue from higher priced gear sold through online and brick-and-mortar retailers to gamers, and we are vulnerable to declines in consumer spending due to, among other things, depressed economic conditions, reductions in disposable income and other factors that affect the retail and consumer electronics markets generally. In addition, our revenues are attributable to sales of high-performance gamer and creator peripherals and gaming components and systems, all of which are products that are geared to the computer gaming market which, like other consumer electronic markets, is susceptible to the adverse effects of poor economic conditions.

Other significant negative effects could include limited growth or reductions in worldwide sales of products that incorporate DRAM modules, such as PCs, smartphones and servers, resulting in excess supply in the worldwide DRAM market and reduced demand for our gear from our customers as they limit or lower their spending and inventory levels. Adverse economic conditions may also reduce our cash flow due to delays in customer payments, increase the risk of customer bankruptcy or business failures and result in increases in bad debt write-offs and receivables reserves.

Other negative effects on our business resulting from adverse economic conditions worldwide may include:

- higher costs for promotions, customer incentive programs and other initiatives used to stimulate demand;
- constraints on consumer spending caused by higher inflation and increased interest rates, leading to weaker consumer demand for our products;
- increased risk of excess and obsolete inventories, which may require write-downs or impairment charges, such as the \$22.5 million inventory impairment and related charges recognized during the second quarter of 2022;
- financial distress or bankruptcy of key suppliers or third-party manufacturers, resulting in insufficient product quantities to meet demand or increases in the cost of producing our gear; and
- financial distress or bankruptcy of key distributors, resellers or retailers.

Depressed economic conditions, whether in our key regional markets or globally, could result in a decline in both product prices and the demand for our gear, which may seriously harm our business.

***Our sponsorship of individuals, teams and events within the gaming community is subject to numerous risks that may seriously harm our business.***

We interact with the gaming community in numerous ways, including through the sponsorship of streamers, esports events, tournaments, esports athletes and teams. These sponsored events and individuals are associated with our brand and represent our commitment to the gaming community. There can be no assurance that we will be able to maintain our existing relationships with any of our sponsored individuals or teams in the future or that we will be able to attract new highly visible gamers to endorse our gear. Additionally, certain individuals or teams with greater access to capital may increase the cost of certain sponsorships to levels we may choose not to match. If this were to occur, our sponsored individuals, teams or events may terminate their relationships with us and

endorse our competitors' products, and we may be unable to obtain endorsements from other comparable alternatives. In addition, if any of our sponsored individuals or teams become unpopular or engage in activities perceived negatively in the gaming community or more broadly, our sponsorship expenditures could be wasted and our brand reputation could be damaged which, in turn, could seriously harm our business.

***DRAM integrated circuits account for most of the cost of producing our DRAM modules and fluctuations in the market price of DRAM integrated circuits may have a material impact on our net revenue and gross profit.***

DRAM integrated circuits, or ICs, account for most of the cost of producing our DRAM modules. The market for these ICs is highly competitive and cyclical. Prices of DRAM ICs have historically been subject to volatility over relatively short periods of time due to a number of factors, including imbalances in supply and demand. We expect these fluctuations will recur in the future, which could seriously harm our business. For example, changes in the selling prices of our DRAM modules can have a substantial impact on our net revenue as our performance memory products represents a significant portion of our overall net revenue. In addition, declines in the market price of ICs enable our competitors to lower prices and we will likely be forced to lower our product prices in order to compete effectively which could have an adverse effect on our net revenue. Further, because we carry inventory of DRAM ICs and DRAM modules at our facility in Taiwan, fluctuations in the market price of these ICs can have an effect on our gross margin. For example, declines in the prices of these ICs and their related products have tended to have a negative short-term impact on gross margin of our DRAM modules. In addition, selling prices of our DRAM modules, on the one hand, and market prices of DRAM ICs, on the other hand, may rise or fall at different rates, which may also affect our gross margin. Any of these circumstances could materially adversely affect our net revenue and gross margins.

We use DRAM ICs produced by Samsung, Micron and Hynix in our DRAM modules. We purchase those DRAM ICs, pursuant to purchase orders and not long-term supply contracts, largely from third-party distributors and, to a lesser extent, directly from those manufacturers. According to the most recent external market share data for the year ended December 31, 2021, Samsung, a manufacturer of DRAM ICs, had an approximately 43% share of the worldwide DRAM IC market, compared to approximately 28% for Hynix and approximately 23% for Micron in each case for the same period. However, should supply from any of these vendors be limited, there can be no assurance that we would be able to meet our needs by purchasing DRAM ICs produced by other manufacturers or from agents and distributors. Further, there are a limited number of companies capable of producing the high-speed DRAM ICs required for our high-performance DRAM modules, and any inability to procure the requisite quantities and quality of DRAM ICs could reduce our production of DRAM modules and could seriously harm our business.

***The coronavirus outbreak has had, and could continue to have, a materially disruptive effect on our business.***

The COVID-19 disease has spread globally and has resulted in authorities implementing numerous measures to try to contain the virus, such as travel bans and restrictions, quarantines, shelter-in-place orders and shutdowns. For example, starting in mid-March 2020, the governor of California, where our headquarters are located, issued shelter-in-place orders restricting non-essential activities, travel and business operations for an indefinite period of time, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in our headquarters closing, work stoppages, slowdowns and delays, travel restrictions and cancellation of events, among other effects, thereby negatively impacting our operations.

The spread of COVID-19 has and could continue to seriously harm our business. Current and potential impacts include, but are not limited to, the following:

- the extended closures in early February 2020 and slow ramp up of capacity of many factories in China and other countries in Asia where many of our products and the components and subcomponents used in the manufacture of our gear created, and could continue to create, supply chain disruptions for our gear;
- supply chain challenges, including longer production and shipping times, and increased supply, shipping and logistics costs, each of which has negatively impacted our gross margins, as well as the need to purchase long-lead time items ahead of demand due to supply constraints;
- labor shortages within delivery and other industries due to extended worker absences could create further supply chain disruptions;
- extended employee absences could negatively impact our business, including potential reductions in the availability of the sales team to complete sales and delays in deliverables and timelines within our engineering and support functions;
- fluctuations in foreign exchange rates could make our products less competitive in a price-sensitive environment for our non-US customers; and



- significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity, including our ability to repay the indebtedness outstanding from our credit facilities.

Since early 2020, we have experienced an increase in demand for our gear as more people were under shelter-in-place restrictions, which we believe have limited people's access to alternative forms of entertainment and social interaction, and thus have increased the demand for home entertainment and connecting with others through content creation. In contrast, as the COVID-19 pandemic subsides, it has resulted in shelter-in-place and other similar restrictions being eased, starting earlier 2021. Such easing of restrictions has resulted in consumers returning to other alternative forms of entertainment and interaction. This in turn has resulted in a decline in demand for our products since the second half of 2021. In addition, we have, and continue to, experience disruption in our supply chain and increased distribution costs, which led to increases in operating costs such as the significantly elevated ocean freight costs since the second half of 2021.

The extent to which the COVID-19 outbreak, including the spread of more contagious and deadly variants, ultimately impacts our business, results of operations, cash flows and financial condition will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the duration and spread of the outbreak, its severity, the actions to contain the virus or treat its impact, and how quickly and to what extent normal economic and operating conditions can resume. Even after the COVID-19 outbreak has subsided, we may continue to experience significant impacts to our business as a result of its global economic impact, including any economic downturn or recession that has occurred or may occur in the future.

***The ongoing war between Russia and Ukraine could adversely affect our business, financial condition and results of operations.***

In February 2022, Russian military forces invaded Ukraine. In response, Ukrainian military personnel and civilians are actively resisting the invasion. Although the length, impact and outcome of the ongoing military conflict in Ukraine is highly unpredictable, this conflict has contributed to significant market and other disruptions, including significant volatility in commodity prices and supply of energy resources, instability in financial markets, supply chain interruptions, political and social instability, changes in consumer or purchaser preferences as well as increase in cyberattacks and espionage.

Russia's recognition of two separatist republics in the Donetsk and Luhansk regions of Ukraine and subsequent military action against Ukraine have also led to an unprecedented expansion of sanction programs imposed by the United States, the European Union, the United Kingdom, Canada, Switzerland, Japan and other countries against Russia, Belarus, the Crimea Region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic. The situation is rapidly evolving as a result of the conflict in Ukraine, and the United States, the European Union, the United Kingdom and other countries may implement additional sanctions, export controls or other measures against Russia, Belarus and other countries, regions, officials, individuals or industries in the respective territories. In response to Russia's invasion of Ukraine and the aforementioned sanctions, we ceased the sale of all of our gear in Russia with immediate effect. While we do not expect this decision to have a material adverse effect on our business, results of operations or financial condition, such sanctions and other measures, as well as the existing and potential further responses from Russia or other countries to such sanctions, tensions and military actions, could adversely affect the global economy and financial markets and could adversely affect our business, financial condition and results of operations.

In addition, the conflict and sanctions against Russia has and could continue to negatively impact the production and sales of consumer electronics due to a variety of factors such as lower consumer confidence, increase the ongoing disruption of supply chains, worsen the current semiconductor chip shortage since Russia and Ukraine are critical suppliers of neon gas and palladium used in chip production, exacerbate energy shortages and high energy prices, and increase cybersecurity threats. These impacts have adversely impacted our operations, sales and profitability, and could continue to do so

We are actively monitoring the situation in Ukraine and assessing its impact on our business, including our suppliers and customers. We have no way to predict the progress or outcome of the conflict in Ukraine or its impacts in Ukraine, Russia or Belarus as the conflict, and any resulting government reactions, are rapidly developing and beyond our control. The extent and duration of the military action, sanctions and resulting market disruptions could be significant and could potentially have substantial impact on the global economy and our business for an unknown period of time. Any of the abovementioned factors could affect our business, financial condition and results of operations. Any such disruptions may also magnify the impact of other risks described in this Quarterly Report on Form 10-Q.

***A significant portion of our net revenue is generated by sales of DRAM modules and any significant decrease in the average selling prices of our DRAM modules would seriously harm our business.***

A significant percentage of our net revenue is generated by sales of DRAM modules. In particular, net revenue generated by sales of DRAM modules accounted for a total of 32.4% and 27.3% of our net revenue in the six months ended June 30, 2022 and

2021, respectively. As a result, any significant decrease in average selling prices of our DRAM modules, whether as a result of declining market prices of DRAM ICs or for any other reason, would seriously harm our business. Selling prices for our DRAM modules tend to increase or decrease with increases or decreases, respectively, in market prices of DRAM ICs.

***Sales to a limited number of customers represent a significant portion of our net revenue, and the loss of one or more of our key customers may seriously harm our business.***

In the six months ended June 30, 2022 and 2021, sales to Amazon accounted for 27.5% and 24.6% of our net revenue, respectively. Sales to our ten largest customers accounted for 52.0% and 50.0% of the same period ended June 30, 2022 and 2021, respectively, of our net revenue. Our customers typically do not enter into long-term agreements to purchase our gear but instead enter into purchase orders with us from time to time. These purchase orders may generally be cancelled and orders can be reduced or postponed by the customer. In addition, our customers are under no obligation to continue purchasing from us and may purchase similar products from our competitors, and some of our customer agreements contain “most favored nation” clauses. Further, while we maintain accounts receivables insurance for many of our customers, we do not maintain such coverage for Amazon and others. As a result, if either Amazon or others were to default on its payment to us, we would not be covered by such insurance, and our business may be seriously harmed. If the financial condition of a key customer weakens, if a key customer stops purchasing our gear, or if uncertainty regarding demand for our gear causes a key customer to reduce their orders and marketing of our gear, our business could be seriously harmed. A decision by one or more of our key customers to reduce, delay or cancel its orders from us, either as a result of industry conditions or specific events relating to a particular customer or failure or inability to pay amounts owed to us in a timely manner, or at all, may seriously harm our business. In addition, because of our reliance on key customers, the loss of one or more key customers as a result of bankruptcy or liquidation or otherwise, and the resulting loss of sales, may seriously harm our business. Additionally, some of our customer agreements contain “most favored nation” clauses.

***We have limited manufacturing facilities that only assemble our DRAM modules, custom built PCs, custom cooling and controllers, we have no guaranteed sources of supply of products or components and we depend upon a small number of manufacturers, some of which are exclusive or single-source suppliers, to supply our gear, each of which may result in product or component shortages, delayed deliveries and quality control problems.***

We maintain limited manufacturing facilities that only assemble certain products such as our DRAM modules, custom built PCs, custom cooling and performance controllers, and as a result, we depend entirely upon third parties to manufacture and supply the gear we sell and the components used in our gear such as gaming peripherals and gaming components. Our gear that is manufactured by outsourced parties is generally produced by a limited number of manufacturers and in some instances is purchased on a purchase order basis. For example, each model of our gaming keyboards, gaming mice, gaming headsets, computer cases, PSUs and cooling solutions is produced by a single manufacturer. We do not have long-term supply agreements with most of our manufacturers and suppliers. In addition, we carry limited inventory of our gear, and the loss of one or more of these manufacturers or suppliers, or a significant decline in production or deliveries by any of them, could significantly limit our shipments of gear or prevent us from shipping that gear entirely.

Our reliance upon a limited number of manufacturers and suppliers exposes us to numerous risks, including those described below.

***Risks relating to production and manufacturing.*** Our business could be seriously harmed if our manufacturers or suppliers ceased or reduced production or deliveries, raised prices, lengthened production or delivery times or changed other terms of sale. In particular, price increases by our manufacturers or suppliers could seriously harm our business if we are unable to pass those price increases along to our customers. Further, the supply of products from manufacturers and suppliers to us could be interrupted or delayed, and we may be unable to obtain sufficient quantities of our products because of factors outside of our control. For example, our manufacturers and suppliers may experience financial difficulties, be affected by natural disasters or pandemics, have limited production facilities or manufacturing capacity, may experience labor shortages or may be adversely affected by regional unrest or military actions, such as the war between Russia and Ukraine. In addition, we may be slower than our competitors in introducing new products or reacting to changes in our markets due to production or delivery delays by our third-party manufacturers or suppliers. Likewise, lead times for the delivery of products being manufactured for us can vary significantly and depend on many factors outside of our control, such as demand for manufacturing capacity and availability of components. In addition, if one of our exclusive or single-source manufacturers were to stop production, or experience product quality or shortage issues, we may be unable to locate or engage a suitable replacement on terms we consider acceptable and, in any event, there would likely be significant delays before we were able to transition production to a new manufacturer and potentially significant costs associated with that transition.

***Risks relating to product quality.*** Our manufacturers or suppliers may provide us with products or components that do not perform reliably or do not meet our quality standards or performance specifications or are susceptible to early failure or contain other

defects. This may seriously harm our reputation, increase our warranty and other costs or lead to product returns or recalls, any of which may seriously harm our business.

*Risks relating to product and component shortages.* From time to time we have experienced product shortages due to both disruptions in supply from the third parties that manufacture or supply our gear and our inability or the inability of these third-party manufacturers to obtain necessary components, and we may experience similar shortages in the future. Moreover, procurement of the other components used in our gear is generally the responsibility of the third parties that manufacture our gear, and we therefore have limited or no ability to control or influence the procurement process or to monitor the quality of components.

Any disruption in or termination of our relationships with any of our manufacturers or suppliers or our inability to develop relationships with new manufacturers or suppliers as and when required would cause delays, disruptions or reductions in product shipment and may require product redesigns, all of which could damage relationships with our customers, seriously harm our brand, increase our costs and otherwise seriously harm our business. Likewise, shortages or interruptions in the supply of products or components, or any inability to procure these products or components from alternate sources at acceptable prices in a timely manner, could delay shipments to our customers and increase our costs, any of which may seriously harm our business.

***If our proprietary iCUE software or Elgato streaming software suite have any “bugs” or glitches, or if we are unable to update the iCUE software or Elgato streaming software suite to incorporate innovations, our business may be seriously harmed.***

Because most of the gear we sell is linked through either our iCUE software or our Elgato streaming software suite, “bugs” or other glitches in the software may cause it to not perform reliably, meet our quality standards or meet performance specifications. Further, even if we detect any bugs or other glitches in the iCUE software or our Elgato streaming software suite we may be unable to update the affected software effectively to remediate these problems. In addition, in order for us to stay competitive, we need to update the iCUE software, Elgato streaming software suite and any other software utilized by our gear, to incorporate innovations and other changes to address gamers and content creators’ changing needs. If we are unable to update the iCUE software or our Elgato streaming software suite to include such updates or address any bugs or glitches, its use to gamers and content creators may be substantially diminished, which could seriously harm our business.

***The need to continuously develop new gear and product improvements increases the risk that our gear will contain defects or fail to meet specifications, which may increase our warranty costs and product returns, lead to recalls of gear, damage our reputation and seriously harm our business.***

Gear that does not meet specifications or that contains, or is perceived by our customers or gamers to contain, defects could impose significant costs on us or seriously harm our business. Our gear may suffer from design flaws, quality control problems in the manufacturing process or components that are defective or do not meet our quality standards. Moreover, the markets we serve are characterized by rapidly changing technology and intense competition and the pressure to continuously develop new gear and improvements and bring that gear and improvements to market quickly heightens the risks that our gear will be subject to both quality control and design problems. Because we largely rely on third parties to manufacture our gear and the components that are used in our gear, our ability to control the quality of the manufacturing process and the components that are used to manufacture our gear is limited. Product quality issues, whether as a result of design or manufacturing flaws or the use of components that are not of the requisite quality or do not meet our specifications, could result in product recalls, product redesign efforts, lost revenue, loss of reputation, and significant warranty and other expenses. In that regard, we have previously voluntarily recalled the SF-series PSUs. Recalls of gear and warranty-related issues can be costly, cause damage to our reputation and result in increased expenses, lost revenue and production delays. We may also be required to compensate customers for costs incurred or damages caused by defective gear. If we incur warranty or product redesign costs, institute recalls of gear or suffer damage to our reputation as a result of defective gear, our business could be seriously harmed.

***While we operate a facility in Taiwan that assembles, tests and packages all of our DRAM modules and certain other products, we rely upon manufacturers in China and Southeast Asia to produce a significant portion of our other products, which exposes us to risks that may seriously harm our business.***

We operate a facility in Taiwan that assembles, tests, packages and ultimately supplies all of our DRAM modules and a significant portion of our cooling solutions, prebuilt and custom gaming systems and custom gaming controllers. We also assemble, test, package and ultimately supply our custom-built PCs in our U.S. facility, and our customized gaming controllers in our U.S. and U.K. facilities. All of the other gear we sell, including the components used to assemble our DRAM modules, are produced at factories operated by third parties located in China, Taiwan and countries in Southeast Asia. The fact that all of these facilities, manufacturers, suppliers and factories are concentrated in China, Taiwan and countries in Southeast Asia exposes us to numerous risks.

We believe one of the most significant risks associated with this concentration is that production may be interrupted or limited because of labor shortages in southern China and by strains on the local infrastructure. In addition, production at facilities located in China, Taiwan or Southeast Asia, including our own manufacturing, testing and packaging facility in Taiwan, and deliveries from those facilities, may be adversely affected by tensions, hostilities or trade disputes involving China, Taiwan, the United States or other countries. There is considerable potential political instability in Taiwan related to its disputes with China. In addition, political instability in countries in Southeast Asia where we source certain components, such as Thailand, could result in delays in shipments or our inability to source certain critical components for our products. Although we do not do business in North Korea, any future increase in tensions between South Korea and North Korea, such as an outbreak or escalation of military hostilities, or between Taiwan and China could materially adversely affect our operations in Asia or the global economy, which in turn may seriously harm our business.

Other risks resulting from this concentration of our manufacturing facilities and our suppliers in China, Taiwan and Southeast Asia include the following:

- the interpretation and enforcement of China's laws continues to evolve, which may make it more difficult for us to obtain a reliable supply of our gear at predictable costs;
- these facilities are located in regions that may be affected by earthquakes, typhoons, other natural disasters, pandemic outbreaks, political instability, military actions, power outages or other conditions that may cause a disruption in supply;
- our costs may be increased and deliveries of our gear may be decreased or delayed by trade restrictions; and
- our reliance on foreign manufacturers and suppliers exposes us to other risks of doing business internationally, some of which are described below under "We conduct our operations and sell our gear internationally and the effect of business, legal and political risks associated with international operations may seriously harm our business."

In addition, if significant tariffs or other restrictions are placed on Chinese imports or any related counter-measures are taken by China, our business may be seriously harmed if such tariffs or counter-measures affect the manufacturing costs of any of our gear. Further, such tariffs could adversely impact our gross profits if we cannot pass the increased costs incurred as a result of these tariffs through to our consumers, or if the resulting increased prices result in a decrease in consumer demand.

The occurrence of any one or more of these risks may seriously harm our business.

***If we do not successfully coordinate the worldwide manufacturing and distribution of our gear, we could lose sales.***

Our business requires that we coordinate the manufacturing and distribution of our gear over a significant portion of the world. We rely upon third parties to manufacture our gear and to transport and distribute our gear to our customers. If we do not successfully coordinate the timely and efficient manufacturing and distribution of our gear, our costs may increase, we may experience a build-up in inventory, we may not be able to deliver sufficient quantities to meet customer demand and we could lose sales, each of which could seriously harm our business.

***Our operating results are particularly sensitive to freight costs, and our costs may increase significantly if we are unable to ship and transport finished products efficiently and economically across long distances and international borders, which may seriously harm our business.***

The majority of our gear is manufactured in Asia, and we transport significant volumes of finished products across long distances and international borders. As a result, our operating results can be significantly affected by changes in transportation costs. In that regard, although we ship our DRAM modules, which have selling prices that are relatively high compared to their size and weight, by air, we generally use ocean freight to ship our other products because of their relatively low selling prices compared to their size and weight. If we underestimate the demand for any of the products we ship by ocean freight, or if deliveries of those products to us by our manufacturers are delayed or interrupted, we may be required to ship those products by air in order to fill orders on a timely basis. Shipping larger or heavier items, such as cases or PSUs, by air is significantly more expensive than using ocean freight. As a result, any requirement that we ship these products by air, whether because we underestimate demand or because of an interruption in supply from the manufacturers who produce these products or for any other reason, could materially increase our costs. In addition, freight rates can vary significantly due to large number of factors beyond our control, including changes in fuel prices or general economic conditions or the threat of terrorist activities or acts of piracy. If demand for air or ocean freight should increase substantially, it could make it difficult for us to procure sufficient cargo transportation space at prices we consider acceptable, or at all. Increases in our freight expenses, or any inability to ship our gear as and when required, may seriously harm our business.

Because our gear must cross international borders, we are subject to risk of delay if our documentation does not comply with customs rules and regulations or for similar reasons. In addition, any increases in customs duties or tariffs, as a result of changes to existing trade agreements between countries or otherwise, could increase our costs or the final cost of our gear to our retailer customers or gamers or decrease our margins. The laws governing customs and tariffs in many countries are complex, subject to many interpretations and often include substantial penalties for non-compliance.

***Our effective tax rate may increase in the future, including as a result of tax legislation changes, which may have a material adverse effect on our business, financial condition and results of operations.***

Our effective tax rate may be impacted by changes in or interpretations of tax laws in any given jurisdiction, utilization of or limitations on our ability to utilize any tax credit carry-forwards, changes in geographical allocation of revenue and expense and changes in management's assessment of matters such as our ability to realize the value of deferred tax assets.

In particular, the U.S. government may enact significant changes to the taxation of business entities including, among others, an increase in the corporate income tax rate, the imposition of minimum taxes or surtaxes on certain types of income, significant changes to the taxation of income derived from international operations, and an addition of further limitations on the deductibility of business interest. While certain draft legislation has been publicly released and is under development in Congress at this time, the likelihood of these changes being enacted or implemented is unclear.

Our effective tax rate could also increase due to several factors, including:

- changes in the relative amounts of income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates;
- changes in tax rates, tax treaties, and regulations or the interpretation of them;
- changes to our assessment about our ability to realize our deferred tax assets that are based on estimates of our future results, the prudence and feasibility of possible tax planning strategies, and the economic and political environments in which we do business;
- the outcome of current and future tax audits, examinations, or administrative appeals; and
- the effects of acquisitions.

In the past, we have experienced fluctuations in our effective income tax rate which reflects a variety of factors that may or may not be present in any given year. In light of these factors, there can be no assurance that our effective income tax rate will not change in future periods. Accordingly, if our effective tax rate were to increase, it may have a material adverse effect on our business, financial condition and results of operations.

***Our ability to utilize our net operating losses, or NOLs, carryforwards and certain other tax attributes may be limited.***

Our ability to utilize our NOL carryforwards to offset potential future taxable income and related income taxes that would otherwise be due is dependent upon our generation of future taxable income before the expiration dates of the NOL carryforwards, and we cannot predict with certainty when, or whether, we will generate sufficient taxable income to use all of our NOL carryforwards.

Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period, the corporation's ability to use its pre-change NOL carryforwards and other pre-change tax attributes (such as research and development tax credits) to offset its post-change income or taxes may be limited. We have experienced ownership changes in the past, and we may experience ownership changes in the future and/or subsequent shifts in our stock ownership (some of which may be outside our control). As a result, if we earn net taxable income, our ability to use our pre-change NOL carryforwards to offset U.S. federal taxable income may be subject to limitations under Section 382, which could potentially result in increased future tax liability to us. In addition, at the state level, there may be periods during which the use of NOL carryforwards is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

***Technological developments or other changes in our industry could render our gear less competitive or obsolete, which may seriously harm our business.***

Our industry is characterized by rapidly evolving technology and standards. These technological developments require us to integrate new technology and standards into our gear, create new and relevant categories of gear and adapt to changing business

models in a timely manner. Our competitors may develop or acquire alternative and competing technologies and standards that could allow them to create new and disruptive products or produce similar competitive products at lower costs of production. Advances in the development of gaming, computing and audiovisual technology could render our gear less competitive or obsolete. For example, the emergence of augmented reality and virtual reality headsets could render certain of our gamer and creator peripherals such as keyboards and mice less relevant, similar to how cloud computing could drastically reduce the need for gaming components and systems. If we are unable to provide new gear for augmented or virtual reality devices or to address other technological trends, our business may be seriously harmed. In addition, government authorities and industry organizations may adopt new standards that apply to our gear. As a result, we may need to invest significant resources in research and development to maintain our market position, keep pace with technological changes and compete effectively. Our product development expenses were \$35.1 million and \$30.7 million for the six months ended June 30, 2022 and 2021, respectively, representing 5.3% and 3.1% of our net revenue for these periods, respectively. Our failure to improve our gear, create new and relevant categories of gear and adapt to changing business models in a timely manner may seriously harm our business.

In addition, Russia's invasion of Ukraine, poor relations between the United States and Russia, and sanctions by the United States and the European Union against Russia could have an adverse impact on our research and development efforts as we outsource significant research and development activities to companies in Ukraine.

***We order most of our gear from third-party manufacturers based on our forecasts of future demand and targeted inventory levels, which exposes us to the risk of both product shortages, which may result in lost sales and higher expenses, and excess inventory, which may require us to sell our gear at substantial discounts and lead to write-offs.***

We depend upon our product forecasts to make decisions regarding investments of our resources and production levels of our gear. Because of the lead time necessary to manufacture our gear and the fact that we usually have little or no advance notice of customer orders, we must order our gear from third-party manufacturers and therefore commit to substantial purchases prior to obtaining orders for those products from our customers. This makes it difficult for us to adjust our inventory levels if orders fall below our expectations. Our failure to predict low demand for product can result in excess inventory, as well as lower cash flows and lower margins if we were unable to sell a product or if we were required to lower product prices in order to reduce inventories, and may also result in inventory write-downs. In addition, the cancellation or reduction of orders by our customers may also result in excess inventory. On the other hand, if actual orders exceed our expectations, we may need to incur additional costs, such as higher shipping costs for air freight or other expedited delivery or higher product costs for expedited manufacturing, in order to deliver sufficient quantities of products to meet customer orders on a timely basis or we may be unable to fill some orders altogether. In addition, many of the types of gear we sell have short product life cycles, so a failure to accurately predict and meet demand for products can result in lost sales that we may be unable to recover in subsequent periods. These short life cycles also make it more likely that slow moving or excess inventory may become obsolete, requiring us to sell our gear at significant discounts or write off entirely excess or obsolete inventory. Any failure to deliver gear in quantities sufficient to satisfy demand can also seriously harm our reputation with both our retailer customers and end-consumers.

Over the past few years, we have expanded the number and type of gear we sell, and the geographic markets in which we sell them, and we will endeavor to further expand our product portfolio and sales reach. The growth of our product portfolio and the markets in which we sell our gear has increased the difficulty of accurately forecasting product demand. We have in the past experienced significant differences between our forecasts and actual demand for our gear and expect similar differences in the future. If we do not accurately predict product demand, our business may be seriously harmed.

***Order cancellations, product returns, price erosion, product obsolescence and retailer and distributor customer and gamer incentive programs may result in substantial inventory and/or receivables write-downs and seriously harm our business.***

The gear we sell is characterized by rapid technological change and short product life cycles. As a result, the gear that we hold in inventory may be subject to significant price erosion or may become obsolete, requiring inventory write-downs. We may experience excess or unsold inventory for a number of reasons, including demand for our gear being lower than our forecasts, order cancellations by our customers and product returns.

In that regard, rights to return products vary by customer and range from the right to return defective products to limited stock rotation rights allowing the exchange of a limited percentage of the customer's inventory for new product purchases. If the estimated market values of products held in our finished goods and work in process inventories at the end of any fiscal quarter are below our cost of these products, we will recognize charges to write down the carrying value of our inventories to market value.

In addition, we provide a variety of rebates to both customers and gamers, including instant rebates, volume incentive rebates, back end rebates and mail-in rebates. We also have contractual agreements and cooperative marketing, promotional and other

arrangements that provide rebates and other financial incentives to our retailer customers and gamers. To a limited extent, we also offer financial incentives related to retailer customer inventory of specific products. The aggregate amount of charges incurred as a result of all of these rebates and other financial incentives is offset from our gross revenue. For the six months ended June 30, 2022 and 2021, our gross revenue was reduced approximately by 9.5% and 7.3%, respectively, as a result of these rebates. In the future, we also may be required to write down inventory or receivables due to product obsolescence or because of declines in market prices of our gear. Any write-downs or offsets could seriously harm our business.

***Our indemnification obligations to our customers and suppliers for intellectual property infringement claims could require us to pay substantial amounts and may seriously harm our business.***

We indemnify a limited number of retailer customers for damages and costs which may arise if our gear infringe third-party patents or other proprietary rights. We may periodically have to respond to claims and litigate these types of indemnification obligations. Any such indemnification claims could require us to make substantial settlement, damages or royalty payments or result in our incurring substantial legal costs. Our insurance does not cover intellectual property infringement. The potential amount of future payments to defend lawsuits or settle or otherwise satisfy indemnified claims under any of these indemnification provisions may be unlimited. We also have replacement obligations for product warranty claims relating to our gear. Our insurance does not cover such claims. Claims for intellectual property infringement and product warranty claims may seriously harm our business.

From time to time, we pay licensing fees in settlement of certain intellectual property infringement claims made by third parties. There can be no assurance that licensing fees paid under these circumstances will not seriously harm our business.

***If we are unable to integrate our gear and proprietary software with third-party hardware, operating system software and other products, the functionality of our gear would be adversely affected, which may seriously harm our business.***

The functionality of some of our gear depends on our ability to integrate that gear with the hardware, operating system software and related products of providers such as Intel, AMD, NVIDIA, Microsoft, Sony and Asus, among others. We rely to a certain extent on the relationships we have with those companies in developing our gear and resolving issues. There can be no assurance that those relationships will be maintained or that those or other companies will continue to provide the necessary information and support to allow us to develop gear that integrates with their products or that third party developers will continue to develop plugins for and integrations with our proprietary software. If integration with the products of those or other companies becomes more difficult, our gear would likely be more difficult to use or may not be compatible with key hardware, operating systems or other products, which would seriously harm our reputation and the utility and desirability of our gear, and, as a result, would seriously harm our business.

***One of our strategies is to grow through acquisitions, which could result in operating difficulties, dilution to our stockholders and other seriously harmful consequences.***

One of our strategies is to grow through acquisitions and we may also seek to grow through other strategic transactions such as alliances and joint ventures. In particular, we believe that our future growth depends in part on our ability to enhance our existing product lines and introduce new gear and categories of gear through acquisitions and other strategic transactions. There is substantial competition for attractive acquisitions and other strategic transactions, and we may not be successful in completing any such acquisitions or other strategic transactions in the future. If we are successful in making any acquisition or strategic transaction, we may be unable to integrate the acquired business effectively or may incur unanticipated expenditures, which could seriously harm our business. The COVID-19 pandemic may make integration of these businesses even more difficult. Acquisitions and strategic transactions can involve a wide variety of risks depending upon, among other things, the specific business or assets being acquired or the specific terms of any transaction.

In addition, we may finance acquisitions or investments, strategic partnerships or joint ventures by issuing common stock, which may be dilutive to our stockholders, or by incurring indebtedness, which could increase our interest expense and leverage, perhaps substantially. Acquisitions and other investments may also result in charges for the impairment of goodwill or other acquired assets. Acquisitions of, or alliances with, technology companies are inherently risky, and any acquisitions or investments we make, or alliances we enter into, may not perform in accordance with our expectations. Accordingly, any of these transactions, if completed, may not be successful and may seriously harm our business.

In addition, foreign acquisitions or strategic transactions with foreign partners involve additional risks, including those related to integration of operations across different geographies, cultures and languages, as well as risks related to fluctuation in currency exchange rates and risks associated with the particular economic, political and regulatory environment in specific countries.

***We need substantial working capital to operate our business, and we rely to a significant degree upon credit extended by our manufacturers and suppliers and borrowings under our revolving credit facility to meet our working capital needs. If we are unable to meet our working capital needs, we may be required to reduce expenses or product purchases, or delay the development, commercialization and marketing of our gear, which would seriously harm our business.***

We need substantial working capital to operate our business. We rely to a significant degree upon credit extended by many of our manufacturers and suppliers in order to meet our working capital needs. Credit terms vary from vendor to vendor but typically allow us zero to 120 days to pay for the products. However, notwithstanding the foregoing, there are instances when we are required to pay for gear in advance of it being manufactured and delivered to us. We may also utilize borrowings under our revolving credit facility to provide working capital, and access to external debt financing has historically been and will likely continue to be very important to us. As a result of any downturn in general economic conditions or conditions in the credit markets or other factors, manufacturers and suppliers may be reluctant to provide us with the same credit that they have in the past, which would require that we increase the level of borrowing under our revolving credit facility or obtain other external financing to provide for our substantial working capital needs. Additional financing may not be available on terms acceptable to us or at all. In particular, our access to other debt financing is limited by the negative covenant in our credit agreement restricting our ability to incur other indebtedness, as well as the financial covenants therein prohibiting our Consolidated Total Net Leverage Ratio from exceeding 3.5 to 1.0 from the quarter ending September 30, 2022 through and including March 31, 2023 and not exceeding 3.0 to 1.0 from the quarter ended June 30, 2023 and each quarter thereafter (provided that upon the occurrence of a Qualified Acquisition, as defined in the credit agreement, such ratio can be increased to 3.5 to 1.0 temporarily provided all the requirements defined in the credit agreement are met) or our Consolidated Interest Coverage Ratio being less than 3.0 to 1.0 (both tested quarterly on a trailing four fiscal quarter basis). As a result, such restrictions could limit, perhaps substantially, the amount of indebtedness we are permitted to borrow under other debt arrangements.

To the extent we are required to use additional borrowings under our revolving credit facility or from other sources (if available and if permitted by the credit facility) to provide working capital, it could increase our interest expense and expose us to other risks of leverage. Any inability to meet our working capital or other cash needs as and when required would likely seriously harm our business, results of operations and financial condition and adversely affect our growth prospects and stock price and could require, among other things, that we reduce expenses, which might require us to reduce shipments of our gear or our inventory levels substantially or to delay or curtail the development, commercialization and marketing of our gear.

***Indebtedness and the terms of our credit facilities may impair our ability to respond to changing business and economic conditions and may seriously harm our business.***

We had \$245.1 million of indebtedness as of June 30, 2022. We have incurred significant indebtedness under our credit facilities to fund working capital and other cash needs and we expect to incur additional indebtedness in the future, particularly if we use borrowings or other debt financing to finance all or a portion of any future acquisitions. In addition, the terms of our credit facilities require, and any debt instruments we enter into in the future may require, that we comply with certain restrictions and covenants. These covenants and restrictions, as well as any significant increase in our indebtedness, could adversely impact us for a number of reasons, including the following:

*Cash flow required to pay debt service.* We may be required to dedicate a substantial portion of our available cash flow to debt service. This risk is increased by the fact that borrowings under our credit facilities bear interest at a variable rate. This exposes us to the risk that the amount of cash required to pay interest under our credit facilities will increase to the extent that market interest increases. Our indebtedness and debt service obligations may also increase our vulnerability to economic downturns and adverse competitive and industry conditions.

*Adverse effect of financial and other covenants.* The covenants and other restrictions in our credit facilities and any debt instruments we may enter into in the future may limit our ability to raise funds for working capital, capital expenditures, acquisitions, product development and other general corporate requirements, which may adversely affect our ability to finance our operations, any acquisitions or investments or other capital needs or engage in other business activities that would be in our interests. Restrictive covenants may also limit our ability to plan for or react to market conditions or otherwise limit our activities or business plans and place us at a disadvantage compared to our competitors.

*Risks of default.* If we breach or are unable to comply with a covenant or other agreement contained in a debt instrument, the lender generally has the right to declare all borrowings outstanding under that debt instrument, together with accrued interest, to be immediately due and payable and may have the right to raise the interest rate. Upon an event of default under our credit facilities, the lender may require the immediate repayment of all outstanding loans and accrued interest. In addition, during the continuance of certain events of default under our credit facilities (subject to a cure period for some events of default), interest may accrue at a rate



that is 200 basis points above the otherwise applicable rate. As a result, any breach or failure to comply with covenants contained in our debt instruments could seriously harm our business. Moreover, our credit facilities are secured by substantially all of our assets (including capital stock of our subsidiaries), except assets of our foreign subsidiaries and shares of some of our foreign subsidiaries, and if we are unable to pay indebtedness secured by collateral when due, whether at maturity or if declared due and payable by the lender following a default, the lender generally has the right to seize and sell the collateral securing that indebtedness. There can be no assurance that we will not breach the covenants or other terms of our credit facilities or any other debt instruments in the future and, if a breach occurs, there can be no assurance that we will be able to obtain necessary waivers or amendments from the lender or to refinance the related indebtedness on terms we find acceptable, or at all. As a result, any breach or default of this nature may seriously harm our business.

*Restrictions under our credit facilities.* We must comply with covenants under our current credit facilities, which require the maintenance of a maximum Consolidated Total Net Leverage Ratio of 3.5 to 1.0 from the quarter ending September 30, 2022 through and including March 31, 2023 and not exceeding 3.0 to 1.0 from the quarter ended June 30, 2023 and each quarter thereafter (provided that upon the occurrence of a Qualified Acquisition, as defined in the credit agreement, such ratio can be increased to 3.5 to 1.0 temporarily provided all the requirements defined in the credit agreement are met) and a minimum Consolidated Interest Coverage Ratio of 3.0 to 1.0 (as defined in our credit facilities). While we were in compliance with all applicable financial covenants under our credit facilities as of June 30, 2022, there can be no assurance that we will not breach these financial covenants in our credit facilities in the future or other covenants in our future credit facilities.

Our credit facilities also include covenants that limit or restrict our ability to, among other things, incur liens on our properties, make acquisitions and other investments and sell assets, in each case, subject to specified exceptions. In addition to the covenants described in the preceding sentence, we are also prohibited from incurring indebtedness other than debt owed to the lenders under our credit facilities, debt associated with certain liens permitted by our credit facilities, certain subordinated debt and other specified exceptions. Our credit facilities also contain restrictions on our ability to pay dividends or make distributions in respect of our common stock or redemptions or repurchases of our common stock.

***We conduct our operations and sell our gear internationally and the effect of business, legal and political risks associated with international operations may seriously harm our business.***

Sales to customers outside the United States accounted for 55.8% and 64.3% our net revenue for six months ended June 30, 2022 and 2021, respectively. In addition, substantially all of the gear that we sell is manufactured at facilities in Asia. Our international sales and operations are subject to a wide range of risks, which may vary from country to country or region to region. These risks include the following:

- export and import duties, changes to import and export regulations, and restrictions on the transfer of funds;
- political and economic instability;
- problems with the transportation or delivery of our gear;
- issues arising from cultural or language differences and labor unrest;
- longer payment cycles and greater difficulty in collecting accounts receivable;
- compliance with trade and technical standards in a variety of jurisdictions;
- difficulties in staffing and managing international operations, including the risks associated with fraud, theft and other illegal conduct;
- compliance with laws and regulations, including environmental, employment and tax laws, which vary from country to country and over time, increasing the costs of compliance and potential risks of non-compliance;
- difficulties enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States and European countries;
- the risk that trade to or from some foreign countries, or companies in foreign countries that manufacture our gear or supply components that are used in our gear, may be affected by political tensions, trade disputes and similar matters, particularly between China and Taiwan, China and the United States, Russia and Ukraine, and the United States and Russia;
- United States and foreign trade restrictions, including those that may limit the importation of technology or components to or from various countries or impose tariffs or quotas;

- difficulties or increased costs in establishing sales and distribution channels in unfamiliar markets, with their own market characteristics and competition; and
- imposition of currency exchange controls or taxes that make it impracticable or costly to repatriate funds from foreign countries.

To the extent we successfully execute our strategy of expanding into new geographic areas, these and similar risks will increase. There can be no assurance that the risks relating to our international operations will not seriously harm our business.

***System security and data protection breaches, as well as cyber-attacks, could disrupt our operations, reduce our expected revenue and increase our expenses, which may seriously harm our business.***

Security breaches, computer malware and cyber-attacks have become more prevalent and sophisticated in recent years. These threats are constantly evolving, making it increasingly difficult to successfully defend against them or implement adequate preventative measures. These malicious attempts have occurred on our systems in the past and are expected to occur in the future. Experienced computer programmers, hackers and employees may penetrate our security controls and misappropriate or compromise our confidential information or that of our employees or third parties. These attacks may create system disruptions or cause shutdowns. These hackers may also develop and deploy viruses, worms and other malicious software programs that attack or otherwise exploit security vulnerabilities in our systems. For example, in early 2021, we discovered the exploitation by hackers of our subsidiary SCUF's servers, which may have enabled such hackers to collect information provided by our customers, including payment card information, which is handled by our third-party ecommerce service provider. Such hackers utilized the credentials we had provided to another third-party to inject a script, which was active for a limited amount of time, that collected this information provided by customers. Additionally, for portions of our information technology infrastructure, including business management and communication software products, we rely on products and services provided by third parties. These providers may also experience breaches and attacks to their products which may impact our systems. Data security breaches may also result from non-technical means, such as actions by an employee with access to our systems. To defend against security threats, both to our internal systems and those of our customers, we must continuously engineer more secure products and enhance security and reliability features, which may result in increased expenses.

Actual or perceived breaches of our security measures, those of third-parties or the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us, our partners, our customers or third parties have exposed, and may in the future could expose us and the parties affected to a risk of loss or misuse of this information, resulting in litigation and potential liability, paying damages, regulatory inquiries or actions, damage to our brand and reputation or other serious harm to our business. Our efforts to prevent and overcome these challenges could increase our expenses and may not be successful. We may experience interruptions, delays, cessation of service and loss of existing or potential customers. Such disruptions could adversely impact our ability to fulfill orders and interrupt other critical functions. Delayed sales, lower margins or lost customers as a result of these disruptions may seriously harm our business.

***We may not be able to maintain compliance with all current and potentially applicable U.S. federal and state or foreign laws and regulations relating to privacy and cybersecurity, and actions by regulatory authorities or changes in legislation and regulation in the jurisdictions in which we operate could have a material adverse effect on our business.***

We are subject to a variety of laws, regulations, and industry standards that relate to the collection, processing, storing, disclosing, using, transfer and protecting of personal data and other data and the privacy of individuals. These laws and regulations constantly evolve and remain subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain. Because we store, process and use data, some of which contain personal data, we are subject to complex and evolving federal, state and local laws and regulations regarding privacy, data protection and other matters. Many of these laws and regulations are subject to change and uncertain interpretation. The U.S. federal and state governments and agencies may in the future enact new legislation and promulgate new regulations governing collection, use, disclosure, storage, processing, transmission and destruction of personal data and other information. New privacy laws add additional complexity, requirements, restrictions and potential legal risk, require additional investment in resources to compliance programs, and could impact trading strategies and availability of previously useful data.

In addition, California enacted the California Consumer Privacy Act of 2018, or the CCPA, which came into force in 2020 (and is discussed in further detail below), which has encouraged “copycat” legislative proposals in other states across the country such as Nevada, Virginia, New Hampshire, Illinois and Nebraska. These legislative proposals may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources to compliance programs, and could impact strategies and availability of previously useful data.

We are also subject to payment card association operating rules, certification requirements and rules governing electronic funds transfers, including the Payment Card Industry Data Security Standard, or PCI DSS, a security standard applicable to companies that collect, store or transmit certain data regarding credit and debit cards, holders and transactions. Any data security incidents, such as those described above, and/or other issues involving payment card information, can constitute a failure to comply with PCI DSS, which may therefore violate payment card association operating rules and the terms of our contracts with payment networks, processors and merchant banks. Such failure to comply may result in the loss of our ability to accept credit and debit card payments, subject us to fines, penalties, and damages. In addition, there is no guarantee that PCI DSS compliance will prevent illegal or improper use of our payment systems or the theft, loss or misuse of data pertaining to credit and debit cards, credit and debit card holders and credit and debit card transactions.

Compliance with existing and emerging privacy and cybersecurity laws, regulations and industry standards could result in increased compliance costs and/or lead to changes in business practices and policies, and any failure to protect the confidentiality of client information could adversely affect our reputation, lead to private litigation against us, and require additional investment in resources, impact strategies and availability of previously useful data any of which could materially and adversely affect our business, operating results and financial condition.

***The collection, storage, transmission, use and distribution of user data could give rise to liabilities and additional costs of operation as a result of laws, governmental regulation and risks of security breaches.***

In connection with certain of our gear, we collect data related to our gamers and streamers. This data is increasingly subject to legislation and regulations in numerous jurisdictions around the world. Government actions are typically intended to protect the privacy and security of personal information and its collection, storage, transmission, use and distribution in or from the governing jurisdiction. In addition, because various jurisdictions have different laws and regulations concerning the use, storage and transmission of such information, we may face requirements that pose compliance challenges in existing markets as well as new international markets that we seek to enter.

Existing privacy-related laws and regulations in the United States and other countries are evolving and are subject to potentially differing interpretations, and various U.S. federal and state or other international legislative and regulatory bodies may expand or enact laws regarding privacy and data security-related matters. For example, the European Union General Data Protection Regulation, or GDPR, which came into effect on May 25, 2018, has led to more stringent operational requirements for processors and controllers of personal data, including, for example, requiring expanded disclosures about how personal information is to be used, limitations on retention of information, mandatory data breach notification requirements, and higher standards for data controllers to demonstrate that they have obtained valid consent or have another legal basis in place to justify their data processing activities. The GDPR provides that European Union member states may make their own additional laws and regulations in relation to certain data processing activities, which could limit our ability to use and share personal data or could require localized changes to our operating model. Under the GDPR, fines of up to €20 million or up to 4% of the total worldwide annual revenue of the preceding financial year, whichever is higher, may be assessed for non-compliance. These new laws also could cause our costs to increase and result in further administrative costs.

Further, the United Kingdom's decision to leave the European Union, often referred to as Brexit, means that from January 1, 2021, we are subject to the GDPR and also the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, e.g. fines up to the greater of €20 million / £17.5 million or 4% of global turnover.

Although there are legal mechanisms to allow for the transfer of personal data from the United Kingdom, EEA and Switzerland to the United States, uncertainty about compliance with such data protection laws remains, and such mechanisms may not be available or applicable with respect to the personal data processing activities necessary to research, develop and market our products and services. For example, legal challenges in Europe to the mechanisms allowing companies to transfer personal data from the EEA or the United Kingdom to the United States could result in further limitations on the ability to transfer personal data across borders, particularly if governments are unable or unwilling to reach new or maintain existing agreements that support cross-border data transfers. Specifically, on July 16, 2020, the Court of Justice of the European Union invalidated Decision 2016/1250 on the adequacy of the protection provided by the EU-U.S. Privacy Shield Framework and guidance following the Decision requires risk assessments to be conducted and, in many cases additional safeguards to be implemented to transfer data under the standard contractual clauses. These recent developments will require us to review and amend the legal mechanisms by which we make and/or receive personal data transfers to/ in the U.S. At present, there are few if any viable alternatives to the Standard Contractual Clauses. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it

could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

We are also subject to evolving European Union and United Kingdom privacy laws on cookies, tracking technologies and e-marketing. In the European Union and the United Kingdom under national laws derived from the ePrivacy Directive, informed consent is required for the placement of a cookie or similar technologies on a user's device and for direct electronic marketing. The GDPR also imposes conditions on obtaining valid consent for cookies, such as a prohibition on pre-checked consents and a requirement to ensure separate consents are sought for each type of cookie or similar technology. The current national laws that implement the ePrivacy Directive are highly likely to be replaced across the European Union (but not directly in the United Kingdom) by an European Union regulation known as the ePrivacy Regulation which will significantly increase fines for non-compliance. While the text of the ePrivacy Regulation is still under development, recent European court decisions and regulators' recent guidance are driving increased attention to cookies and tracking technologies. If the trend of increasing enforcement by regulators of the strict approach in recent guidance and decisions continues, this could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, increase costs and subject us to additional liabilities. Regulation of cookies and similar technologies, and any decline of cookies or similar online tracking technologies as a means to identify and potentially target users, may lead to broader restrictions and impairments on our marketing and personalization activities and may negatively impact our efforts to understand users.

In addition, the CCPA, which came into force in 2020, creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal data. For example, the CCPA gives California residents expanded rights to access and require deletion of their personal data, opt out of certain personal data sharing and receive detailed information about how their personal data is used. Failure to comply with the CCPA creates additional risks including enforcement by the California attorney general, private rights of actions for certain data breaches, and damage to reputation. The CCPA may increase our compliance costs and potential liability. Additionally, the Consumer Personal Information Law and Agency Initiative (California Proposition 24), the California Privacy Rights Act was approved by California voters on November 3, 2020. California Proposition 24 would impose additional data protection obligations on companies doing business in California. It will also create a new California data protection agency specifically tasked to enforce the law, which could likely result in increased regulatory scrutiny of California businesses in the areas of data protection and security. The new California Privacy Rights Act takes effect on January 1, 2023 and will apply to information collected on or after January 1, 2022.

Further, information security risks have generally increased in recent years because of the proliferation of new technologies and the increased sophistication and activities of perpetrators of cyber-attacks. Hackers and data thieves are increasingly sophisticated and operating large-scale and complex automated attacks. As cyber threats continue to evolve, we may be required to expend additional resources to further enhance our information security measures, develop additional protocols and/or to investigate and remediate any information security vulnerabilities. We cannot guarantee that our facilities and systems will be free of security breaches, cyber-attacks, acts of vandalism, computer viruses, malware, ransomware, denial-of-service attacks, misplaced or lost data, programming and/or human errors or other similar events. Any compromise or perceived compromise of the security of our systems could damage our reputation, result in disruption or interruption to our business operations, reduce demand for our products and subject us to significant liability and expense as well as regulatory action and lawsuits, which would harm our business, operating results and financial condition.

In addition, any failure or perceived failure by us to comply with privacy or security laws, policies, legal obligations or industry standards, or any security incident that results in the actual or alleged unauthorized release or transfer of personal data, may result in governmental enforcement actions and investigations, including fines and penalties, enforcement orders requiring us to cease processing or operating in a certain way, litigation and/or adverse publicity, including by consumer advocacy groups, and could cause our customers to lose trust in us, which could have material impacts on our revenue and operations and could seriously harm our business. We may also face civil claims including representative actions and other class action type litigation (where individuals have suffered harm), potentially amounting to significant compensation or damages liabilities, as well as associated costs, diversion of internal resources, and reputational harm.

***We may be adversely affected by the financial condition of retailers and distributors to whom we sell our gear and may also be adversely affected by the financial condition of our competitors.***

Retailers and distributors of consumer electronics products have, from time to time, experienced significant fluctuations in their businesses and some of them have become insolvent. A retailer or distributor experiencing such difficulties will generally not purchase and sell as much of our gear as it would under normal circumstances and may cancel orders. In addition, a retailer or distributor experiencing financial difficulties generally increases our exposure to uncollectible receivables. Moreover, if one of our distributor or retailer customers experiences financial distress or bankruptcy, they may be required to liquidate their inventory of our

gear, or similar products that compete with our gear, at reduced prices, which can result in substantial over-supply and reduced demand for our gear over the short term. If any of these circumstances were to occur, it could seriously harm our business.

Likewise, our competitors may from time to time experience similar financial difficulties or may elect to terminate their sales of certain products. If one of our competitors experiences financial distress or bankruptcy and is forced to liquidate inventory or exits a product line and disposes of inventory at reduced prices, this may also result in over-supply of and reduced demand for our gear and could have a short-term adverse effect on our results of operations and financial condition.

***Our online operations are subject to numerous risks that may seriously harm our business.***

Our online operations, where we sell a number of products through our online stores, subject us to certain risks that could seriously harm our business, financial condition and results of operations. For example, the operation and expansion of our online stores may seriously harm our relationships with our retailers and distributors. Further, existing and future regulations and laws could impede the growth of our online operations. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, consumer protection and social media marketing. We cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings or actions against us by governmental entities or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business and decrease the use of our sites by gamers, streamers and suppliers and may result in the imposition of monetary liability.

In addition, our online stores are partially handled by a third-party ecommerce service provider. We rely on this service provider to handle, among other things, payment and processing of online sales. If the service provider does not perform these functions satisfactorily, we may find another third-party service provider or undertake such operations ourselves, but we may not be able to successfully do either. In either case, our online sales and our customer service reputation could be adversely affected which, in turn, may seriously harm our business.

***We may recognize restructuring and impairment charges in future periods, which will adversely affect our operating results and could seriously harm our business.***

Depending on market and economic conditions in future periods, we may implement restructuring initiatives. As a result of these initiatives, we could incur restructuring charges, lose key personnel and experience disruptions in our operations and difficulties in delivering our gear.

We are required to test goodwill, intangible assets and other long-lived assets for recoverability and may be required to record charges if there are indicators of impairment, and we have in the past recognized impairment charges. As of June 30, 2022, we had approximately \$347.9 million of goodwill, \$236.5 million of intangible assets and \$72.3 million of other long-lived assets. One of our strategies is to grow through acquisitions of other businesses or technologies and, if we are successful in doing so, these acquisitions may result in goodwill and other long-lived assets. The risk that we will be required to recognize impairment charges is also heightened by the fact that the life cycles of much of the gear we sell are relatively short, which increases the possibility that we may be required to recognize impairment charges for obsolete inventory. Impairment charges will adversely affect our operating results and could seriously harm our business.

***Our future success depends to a large degree on our ability to defend the Corsair brand and product family brands such as SCUF, Vengeance, K70, Elgato and iCUE from infringement and, if we are unable to protect our brand and other intellectual property, our business may be seriously harmed.***

We consider the Corsair brand to be one of our most valuable assets. We also consider the Elgato, Origin, and SCUF brands, proprietary technology brands such as iCUE and Slipstream, and major product family brands such as Corsair ONE, Dark Core, Dominator, Glaive, Harpoon, Ironclaw, K70, K100, Nightsword, Scimitar, Vengeance, Virtuoso and Void to be important to our business. Our future success depends to a large degree upon our ability to defend the Corsair brand, proprietary technology brands and product family brands from infringement and to protect our other intellectual property. We rely on a combination of copyright, trademark, patent and other intellectual property laws and confidentiality procedures and contractual provisions such as nondisclosure terms to protect our intellectual property. Although we hold a trademark registration on the Corsair name in the United States and a number of other countries, the Corsair name does not have trademark protection in other parts of the world, including some major markets, and we may be unable to register the Corsair name as a trademark in some countries. Likewise, we hold a trademark registration on certain brands such as K70 only in the United States, Australia and New Zealand and therefore such brands do not have trademark protection in other parts of the world. If third parties misappropriate or infringe on our brands or we are unable to protect

our brands, or if third parties use the Corsair, Corsair ONE, Dark Core, Dominator, Elgato, Glaive, Harpoon, iCUE, Ironclaw, K70, K100, Nightsworld, Origin, SCUF, Slipstream, Scimitar, Vengeance, Virtuoso and Void brand names, or other brand names we maintain, to sell their products in countries where we do not have trademark protection, it may seriously harm our business.

We hold a limited number of patents and pending patent applications. It is possible that any patent owned by us will be invalidated, deemed unenforceable, circumvented or challenged and that our pending or any future patent applications will not be granted. In addition, other intellectual property laws or our confidentiality procedures and contractual provisions may not adequately protect our intellectual property and others may independently develop similar technology, duplicate our gear, or design around any intellectual property rights we may have. Any of these events may seriously harm our business.

Certain of the licenses pursuant to which we are permitted to use the intellectual property of third parties can be terminated at any time by us or the other party. If we are unable to negotiate and maintain licenses on acceptable terms, we will be required to develop alternative technology internally or license it from other third parties, which may be difficult and costly or impossible.

The expansion of our business will require us to protect our trademarks, domain names, copyrights, patents and other intellectual property rights in an increasing number of jurisdictions, a process that is expensive and sometimes requires litigation. If we are unable to protect and enforce our trademarks, domain names, copyrights, patents and other intellectual property rights, or prevent third parties from infringing upon them, our business may be seriously harmed.

We have taken steps in the past to enforce our intellectual property rights and expect to continue to do so in the future. However, it may not be practical or cost-effective for us to enforce our rights with respect to certain items of intellectual property rights fully, or at all, particularly in developing countries where the enforcement of intellectual property rights may be more difficult than in the United States. It is also possible that, given the costs of obtaining patent protection, we may choose not to seek patent protection for certain items of intellectual property that may later turn out to be important.

***Some of our products contain open source software, which may pose particular risks to our proprietary software and products.***

Our products rely on software licensed by third parties under open source licenses, including as incorporated into software we receive from third-party commercial software vendors, and will continue to rely on such open source software in the future. Use of open source software may entail greater risks than use of third-party commercial software, as open source licensors generally do not provide support, updates, warranties or other contractual protections regarding infringement claims or the quality of the code, and the wide availability of source code to components used in our products could expose us to security vulnerabilities. Further, the terms of many open source licenses have not been interpreted by U.S. courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market or commercialize our products. As a result, we may face claims from third parties claiming ownership of what we believe to be open source software. In addition, by the terms of some open source licenses, under certain conditions, we could be required to release our proprietary source code, and to make our proprietary software available under open source licenses, including authorizing further modification and redistribution. These claims or requirements could result in litigation and could require us to purchase a costly license or cease offering the implicated products unless and until we can re-engineer them to avoid infringement or release of our proprietary source code. This re-engineering process could require significant additional research and development resources. In addition, we have intentionally made certain software we have developed available on an open source basis, both by contributing modifications back to existing open source projects, and by making certain internally developed tools available pursuant to open source licenses, and we plan to continue to do so in the future. While we engage in a review process for any such contributions, which is designed to protect any code that may be competitively sensitive, it is still possible that our competitors or others could use this code for competitive purposes, or for commercial or other purposes beyond what we intended. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could seriously harm our business.

***We are, have in the past been, and may in the future be, subject to intellectual property infringement claims, which are costly to defend, could require us to pay damages or royalties and could limit our ability to use certain technologies in the future.***

Companies in the technology industry are frequently subject to litigation or disputes based on allegations of infringement or other violations of intellectual property rights. We have faced claims that we have infringed, or that our use of components or products supplied to us by third parties have infringed, patents or other intellectual property rights of others in the past and may in the future face similar claims. While we are currently involved in an intellectual property infringement claim, we do not believe such claim will have a material adverse effect on our business.

Any intellectual property claims, with or without merit, can be time-consuming, expensive to litigate or settle and can divert management resources and attention. For example, in the past we have settled claims relating to infringement allegations and agreed to make royalty or license payments in connection with such settlements. An adverse determination could require that we pay damages, which could be substantial, or stop using technologies found to be in violation of a third-party's rights and could prevent us from selling some of our gear. In order to avoid these restrictions, we may have to seek a license for the technology. Any such license may not be available on reasonable terms or at all, could require us to pay significant royalties and may significantly increase our operating expenses or otherwise seriously harm our business or operating results. As a result, we may be required to develop alternative non-infringing technologies, which could require significant effort and expense and might not be successful or, if alternative non-infringing technologies already exist, we may be required to license those technologies from third parties, which may be expensive or impossible. If we cannot license or develop technologies for any infringing aspects of our business, we may be forced to halt sales of our gear incorporating the infringing technologies and may be unable to compete effectively. Any of these results may seriously harm our business.

***We and our contract manufacturers may be adversely affected by seismic activity or other natural disasters, and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.***

Our corporate headquarters are located in the San Francisco Bay Area and the testing and packaging of most of our DRAM modules take place in our facility in Taiwan. Both locations are known to experience earthquakes from time to time, some of which have been severe. In addition, typhoons and other severe weather systems frequently affect Taiwan. Most of the third-party facilities where our gear and some of the components used in our gear is manufactured are located in China, Taiwan, Southeast Asia and other areas that are known for seismic activity and other natural disasters. Earthquakes in any of the foregoing areas may also result in tsunamis. We do not carry earthquake insurance. As a result, earthquakes or other natural disasters could severely disrupt our operations, either directly or as a result of their effect on third-party manufacturers and suppliers upon whom we rely and their respective supply chains and may negatively impact the ordering patterns of our customers and may seriously harm our business.

***We are subject to various environmental laws, conflict mineral-related provisions of the Dodd-Frank Act and other regulations that could impose substantial costs upon us and may seriously harm our business.***

Our operations, properties and the gear we sell are subject to a variety of U.S. and foreign environmental laws and regulations governing, among other things, air emissions, wastewater discharges, management and disposal of hazardous and non-hazardous materials and waste, and remediation of releases of hazardous materials. Our failure to comply with present and future requirements under these laws and regulations, or environmental contamination or releases of hazardous materials on our leased premises, as well as through disposal of our gear, could cause us to incur substantial costs, including clean-up costs, personal injury and property damage claims, fines and penalties, costs to redesign our gear or upgrade our facilities and legal costs, or require us to curtail our operations. Environmental contamination or releases of hazardous materials may also subject us to claims of property damage or personal injury, which could result in litigation and require us to make substantial payments to satisfy adverse judgments or pay settlements. Liability under environmental laws can be joint and several and without regard to comparative fault. We also expect that our operations will be affected by new environmental laws and regulations on an ongoing basis, which will likely result in additional costs. Environmental laws and regulations could also require that we redesign our gear or change how our gear is made, any of which could seriously harm our business. The costs of complying with environmental laws and regulations or the effect of any claims or liability concerning or resulting from noncompliance or environmental contamination could also seriously harm our business.

Under the Dodd-Frank Act, the SEC adopted disclosure and reporting requirements for companies that use "conflict" minerals originating from the Democratic Republic of Congo or adjoining countries. We continue to incur costs associated with complying with these requirements, such as costs related to developing internal controls for the due diligence process, determining the source of any conflict minerals used in our gear, auditing the process and reporting to our customers and the SEC. In addition to the SEC regulation, the European Union, China and other jurisdictions are developing new policies focused on conflict minerals that may impact and increase the cost of our compliance program. Also, since our supply chain is complex, we may face reputational challenges if we are unable to sufficiently verify the origins of the subject minerals. Moreover, we are likely to encounter challenges to satisfy those customers who require that all of the components of our gear are certified as "conflict free." If we cannot satisfy these customers, they may choose a competitor's products.

The U.S. federal government has issued new policies for federal procurement focused on eradicating the practice of forced labor and human trafficking. In addition, the United Kingdom and the State of California have issued laws that require us to disclose our policy and practices for identifying and eliminating forced labor and human trafficking in our supply chain. While we have a policy and management systems to identify and avoid these practices in our supply chain, we cannot guarantee that our suppliers will always

be in conformance to these laws and expectations. We may face enforcement liability and reputational challenges if we are unable to sufficiently meet these expectations.

## Risks Related to Our Common Stock

### ***We are controlled by EagleTree, whose interests in our business may be different than yours.***

As of June 30, 2022, EagleTree beneficially owned approximately 56.6% of our common stock and is able to control our affairs in all cases. Further, pursuant to the terms of an Investor Rights Agreement between us and EagleTree, EagleTree has the right, among other things, to designate the chairman of our board of directors, as well as the right to nominate up to five out of eight directors to our board of directors as long as affiliates of EagleTree beneficially own at least 50% of our common stock, four directors as long as affiliates of EagleTree beneficially own at least 40% and less than 50% of our common stock, three directors as long as affiliates of EagleTree beneficially own at least 30% and less than 40% of our common stock, two directors as long as affiliates of EagleTree beneficially own at least 20% and less than 30% of our common stock and one director as long as affiliates of EagleTree beneficially own at least 10% and less than 20% of our common stock.

As a result of the foregoing, EagleTree or its respective designees to our board of directors will have the ability to control the appointment of our management, the entering into of mergers, sales of substantially all or all of our assets and other extraordinary transactions and influence amendments to our amended and restated certificate of incorporation and bylaws. So long as EagleTree continues to beneficially own a majority of our common stock, they will have the ability to control the vote in any election of directors and will have the ability to prevent any transaction that requires stockholder approval regardless of whether other stockholders believe the transaction is in our best interests. In any of these matters, the interests of EagleTree may differ from or conflict with your interests. Moreover, this concentration of stock ownership may also adversely affect the trading price for our common stock to the extent investors perceive disadvantages in owning stock of a company with a controlling stockholder. In addition, EagleTree is in the business of making investments in companies and may, from time to time, acquire interests in businesses that directly or indirectly compete with our business, as well as businesses that are our significant existing or potential suppliers or customers. EagleTree may acquire or seek to acquire assets that we seek to acquire and, as a result, those acquisition opportunities may not be available to us or may be more expensive for us to pursue.

### ***We are a “controlled company” within the meaning of the Nasdaq rules and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.***

EagleTree controls a majority of the voting power of our outstanding common stock. As a result, we are a “controlled company” within the meaning of the corporate governance standards of the Nasdaq Global Select Market, or Nasdaq. Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements, including requirements that:

- a majority of our board of directors consist of “independent directors” as defined under the rules of Nasdaq;
- our board of directors have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee purpose and responsibilities; and
- our director nominations be made, or recommended to the full board of directors, by our independent directors or by a nominations committee that is composed entirely of independent directors and that we adopt a written charter or board resolution addressing the nominations process.

We currently utilize certain of these exemptions. As a result, pursuant to an agreement with EagleTree, nominations for certain of our directors will be made by EagleTree based on its ownership of our outstanding voting stock. Accordingly, for so long as we are a “controlled company,” you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq. In the event that we cease to be a “controlled company” and our shares continue to be listed on Nasdaq, we will be required to comply with these provisions within the applicable transition periods.

### ***The market price of our common stock may be volatile and may decline.***

The stock market in general, and the market for stocks of technology companies in particular, has been highly volatile. As a result, the market price of our common stock is likely to be volatile, and investors in our common stock may experience a decrease, which could be substantial, in the value of their common stock or the loss of their entire investment for a number of reasons, including reasons unrelated to our operating performance or prospects. The market price of our common stock could be subject to wide



fluctuations in response to a broad and diverse range of factors, including those described elsewhere in this “Risk Factors” section and the following:

- variations in our operating performance and the performance of our competitors;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in estimates or recommendations by securities analysts concerning us or our competitors;
- publication of research reports by securities analysts about us or our competitors or our industry;
- our failure or the failure of our competitors to meet analysts’ estimates or guidance that we or our competitors may give to the market;
- additions and departures of key personnel;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- developments of new technologies or other innovations;
- the passage of legislation or other regulatory developments affecting us or our industry;
- speculation in the press or investment community;
- changes in accounting principles;
- the outbreak of epidemics or pandemics, such as the coronavirus pandemic;
- natural disasters, terrorist acts, acts of war or periods of widespread civil unrest, such as any military actions taken as a result of the war between Russia and Ukraine; and
- changes in general market and economic conditions.

In the past, securities class action litigation has often been initiated against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert our management’s attention and resources and could also require us to make substantial payments to satisfy judgments or to settle litigation.

***An active, liquid and orderly market for our common stock may not be maintained.***

Our stock only recently began trading on Nasdaq, but we can provide no assurance that we will be able to maintain an active trading market on Nasdaq or any other exchange in the future. If an active market for our common stock is not maintained, it may be difficult for our stockholders to sell shares without depressing the market price for the shares or at all. An inactive market may also impair our ability to raise capital by selling shares and may impair our ability to acquire other businesses, applications, or technologies using our shares as consideration.

***Future sales of our common stock in the public market could cause our stock price to fall.***

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public, the trading price of our common stock could decline. Based upon the number of shares outstanding as of June 30, 2022, we had outstanding a total of 95.8 million shares of common stock. Of these shares, all of the shares of our common stock sold in the initial public offering and in the secondary offering in January 2021, are freely tradable, without restriction, in the public market.

As of June 30, 2022, the holders of approximately 54.2 million shares of our common stock, or approximately 56.6% of our total outstanding common stock based upon the number of shares outstanding as of June 30, 2022, will be entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

***If we sell shares of our common stock in future financings, stockholders may experience immediate dilution and, as a result, our stock price may decline.***

We may from time to time issue additional shares of common stock at a discount from the current trading price of our common stock. As a result, our stockholders would experience immediate dilution upon the purchase of any shares of our common stock sold at

such discount. In addition, as opportunities present themselves, we may enter into financing or similar arrangements in the future, including the issuance of debt securities, preferred stock or common stock. If we issue common stock or securities convertible into common stock, our common stockholders would experience additional dilution and, as a result, our stock price may decline.

***Our amended and restated certificate of incorporation and amended and restated bylaws contain antitakeover provisions that could delay, deter or prevent takeover attempts that stockholders may consider favorable or attempts to replace or remove our management that would be beneficial to our stockholders.***

Certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws could delay, deter or prevent a change in control or other takeover of our company that our stockholders might consider to be in their best interests, including transactions that might result in a premium being paid over the market price of our common stock and also may limit the price that investors are willing to pay in the future for our common stock. These provisions may also have the effect of preventing changes in our management. For example, our amended and restated certificate of incorporation and amended and restated bylaws include anti-takeover provisions that:

- authorize our board of directors, without further action by the stockholders, to issue preferred stock in one or more series and, with respect to each series, to fix the number of shares constituting that series and to establish the rights and other terms of that series, which may include dividend and liquidation rights and preferences, conversion rights and voting rights;
- require that actions to be taken by our stockholders may only be taken at an annual or special meeting of our stockholders and not be taken by majority written consent when EagleTree owns less than a majority of our outstanding common stock;
- specify that special meetings of our stockholders can be called only by the Secretary at the direction of our board of directors or the Chairman of our board of directors and not by our stockholders or any other persons when EagleTree owns less than a majority of our outstanding common stock;
- establish advance notice procedures for stockholders to submit nominations of candidates for election to our board of directors and other proposals to be brought before a stockholders meeting;
- provide that directors may be removed only for cause and only by the affirmative vote of at least 66-2/3% in voting power of the then-outstanding shares of capital stock of our company when EagleTree owns less than 50% in voting power of our stock entitled to vote at an election of directors;
- provide for the sole power of the board of directors, or EagleTree in the case of a vacancy of one of their respective board designees, to fill any vacancy on the board of directors, whether such vacancy occurs as a result of an increase in the number of directors or otherwise;
- divide our board of directors into three classes, serving staggered terms of three years each;
- do not give the holders of our common stock cumulative voting rights with respect to the election of directors, which means that the holders of a majority of our outstanding shares of common stock can elect all directors standing for election;
- require the affirmative vote by the holders of at least two-thirds of the combined voting power of all shares of our outstanding capital stock entitled to vote generally in the election of our directors (voting as a single class) in order to amend certain provisions of our certificate of incorporation or bylaws, including those provisions changing the size of the
- board of directors, the removal of certain directors, the availability of action by majority written consent of the stockholders or the restriction on business combinations with interested stockholders, among others; and
- when EagleTree owns less than a majority of our outstanding common stock, require the affirmative vote by the holders of at least two-thirds of the combined voting power of all shares of our outstanding capital stock entitled to vote generally in the election of our directors (voting as a single class) for any amendment, alteration, change, addition, rescission or repeal of our amended and restated certificate of incorporation.

We have opted out of Section 203 of the Delaware General Corporation Law, or DGCL, which prevents stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations involving us unless certain conditions are satisfied. However, our amended and restated certificate of incorporation will include similar provisions that we may not engage in certain business combinations with interested stockholders for a period of three years following the time that the stockholder became an interested stockholder, subject to certain conditions. Pursuant to the terms of our amended and restated certificate of incorporation, EagleTree will not be considered an interested stockholder for purposes of this provision.

***Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.***

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law.

In addition, as permitted by Section 145 of the DGCL, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

- we will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful;
- we may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law;
- we are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification;
- we will not be obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification;
- the rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons; and
- we may not retroactively amend our amended and restated bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

***We do not currently intend to pay dividends on our common stock, and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

We do not currently intend to pay any cash dividends on our common stock for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, you are not likely to receive any dividends on your common stock for the foreseeable future. Since we do not intend to pay dividends, your ability to receive a return on your investment will depend on any future appreciation in the market value of our common stock. There is no guarantee that our common stock will appreciate or even maintain the price at which our holders have purchased it.

***If securities or industry analysts do not publish or cease publishing research or reports about our business, if they adversely change their recommendations regarding our shares or if our operating results do not meet their expectations, the market price of our common stock could decline.***

The market price of our common stock is influenced by the research and reports that industry or securities analysts publish about us or our business. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause the market price or trading volume of our common stock to decline. Moreover, if one or more of the analysts who cover our company downgrade our common stock or if our operating results or prospects do not meet their expectations, the market price of our common stock could decline.

***Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (a) any derivative action or proceeding brought on our behalf; (b) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders; (c) any action asserting a claim arising pursuant to any provision of the DGCL or of our amended and restated certificate of incorporation or our amended and restated bylaws; or (d) any action asserting a claim related to or

involving our company that is governed by the internal affairs doctrine. Our amended and restated certificate of incorporation also provides that the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could seriously harm our business. The choice of forum provision requiring that the Court of Chancery of the State of Delaware be the exclusive forum for certain actions would not apply to suits brought to enforce any liability or duty created by the Exchange Act.

***Our amended and restated certificate of incorporation contains a provision renouncing our interest and expectancy in certain corporate opportunities.***

Under our amended and restated certificate of incorporation, none of EagleTree or any of its respective portfolio companies, funds or other affiliates, or any of their officers, directors, agents, stockholders, members or partners will have any duty to refrain from engaging, directly or indirectly, in the same business activities, similar business activities or lines of business in which we operate. In addition, our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, no officer or director of ours who is also an officer, director, employee, managing director or other affiliate of EagleTree will be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that any such individual was presented with a corporate opportunity, other than specifically in their capacity as one of our officers or directors, and ultimately directs such corporate opportunity to EagleTree instead of us, or does not communicate information regarding a corporate opportunity to us that the officer, director, employee, managing director or other affiliate has directed to EagleTree. For instance, a director of our company who also serves as a director, officer or employee of EagleTree, or any of its respective portfolio companies, funds or other affiliates may pursue certain acquisitions or other opportunities that may be complementary to our business and, as a result, such acquisition or other opportunities may not be available to us. As of June 30, 2022, this provision of our amended and restated certificate of incorporation relates only to the EagleTree director designees. These potential conflicts of interest could seriously harm our business if attractive corporate opportunities are allocated by EagleTree to itself or its respective portfolio companies, funds or other affiliates instead of to us.

**General Risk Factors**

***We may be subject to future tax audits in various jurisdictions, which may seriously harm our business.***

We operate in multiple jurisdictions, are taxed pursuant to the tax laws of each of these jurisdictions and may be subject to future tax audits in each of these jurisdictions. Because we have substantial operations in a number of locations worldwide, tax authorities in various jurisdictions may raise questions concerning matters such as transfer pricing, whether revenues or expenses should be attributed to particular countries, the presence or absence of permanent establishments in particular countries and similar matters. In addition, we have engaged in a number of material restructuring transactions in various jurisdictions, and the tax positions we have adopted in connection with these restructuring transactions may be subject to challenge. Accordingly, a material assessment by a tax authority in any jurisdiction could require that we make significant cash payments without reimbursement. If this were to occur, our business may be seriously harmed.

***Failure to comply with other laws and governmental regulations may seriously harm our business.***

Our business is subject to regulation by various federal and state governmental agencies. Such regulation includes the consumer protection laws of the Federal Trade Commission, the import/export regulatory activities of the Department of Commerce, the product safety regulatory activities of the Consumer Products Safety Commission, the regulatory activities of the Occupational Safety and Health Administration, the environmental regulatory activities of the Environmental Protection Agency, the labor regulatory activities of the Equal Employment Opportunity Commission and tax and other regulations by a variety of regulatory authorities in each of the areas in which we conduct business. We are also subject to regulation in other countries where we conduct business. In certain jurisdictions, such regulatory requirements may be more stringent than in the United States. We are also subject to a variety of federal, state and foreign employment and labor laws and regulations, including the Americans with Disabilities Act, the Federal Fair Labor Standards Act and other laws and regulations related to working conditions, wage-hour pay, overtime pay, employee benefits, anti-discrimination and termination of employment.

Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, fines, damages, civil and criminal penalties or injunctions. In certain of these instances the former employee has brought legal proceedings against us, and we expect that we will encounter similar actions against us in the future. An adverse outcome in any such litigation could require us to pay damages, which may include punitive damages, attorneys' fees and costs.

As a result, noncompliance or any related enforcement or civil actions could result in governmental sanctions and possible civil or criminal litigation, which could seriously harm our business and result in a significant diversion of management's attention and resources.

***Failure to comply with the U.S. Foreign Corrupt Practices Act, other applicable anti-corruption and anti-bribery laws, and applicable trade control laws could subject us to penalties and other adverse consequences that may seriously harm our business.***

Our gear is manufactured and/or assembled in China, Taiwan, where we maintain a manufacturing facility, countries in Southeast Asia and the United Kingdom and we sell our gear in many countries outside of the United States. Our operations are subject to the U.S. Foreign Corrupt Practices Act, or the FCPA, as well as the anti-corruption and anti-bribery laws in the countries where we do business. The FCPA prohibits covered parties from offering, promising, authorizing or giving anything of value, directly or indirectly, to a "foreign government official" with the intent of improperly influencing the official's act or decision, inducing the official to act or refrain from acting in violation of lawful duty, or obtaining or retaining an improper business advantage. The FCPA also requires publicly traded companies to maintain records that accurately and fairly represent their transactions and to have an adequate system of internal accounting controls. In addition, other applicable anti-corruption laws prohibit bribery of domestic government officials, and some laws that may apply to our operations prohibit commercial bribery, including giving or receiving improper payments to or from non-government parties, as well as so-called "facilitation" payments. In addition, we are subject to U.S. and other applicable trade control regulations that restrict with whom we may transact business, including the trade sanctions enforced by the U.S. Treasury, Office of Foreign Assets Control, or OFAC.

While we have implemented policies, internal controls and other measures reasonably designed to promote compliance with applicable anti-corruption and anti-bribery laws and regulations, and certain safeguards designed to ensure compliance with U.S. trade control laws, our employees or agents may engage in improper conduct for which we might be held responsible. Any violations of these anti-corruption or trade controls laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction, and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may seriously harm our business, financial condition and results of operations. In addition, our brand and reputation, our sales activities or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

***As a public reporting company, we are subject to rules and regulations established from time to time by the SEC and Nasdaq regarding our internal controls over financial reporting. We may not complete needed improvements to our internal controls over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in our company and, as a result, the value of our common stock and your investment.***

We are subject to the rules and regulations established from time to time by the Securities and Exchange Commission, or SEC, and Nasdaq. These rules and regulations require, among other things, that we establish and periodically evaluate procedures with respect to our internal controls over financial reporting. As part of these evaluations, material weaknesses in our internal controls over financial reporting may be identified. A material weakness is a deficiency, or a combination of deficiencies, in internal controls over financial reporting such that there is a reasonable possibility that a material misstatement of a company's annual or interim consolidated financial statements will not be prevented or detected on a timely basis. While we were able to remediate previously identified material weaknesses in our internal controls over financial reporting, there can be no guarantee we will not identify similar or other material weaknesses in the future and if such material weaknesses are identified, there can be no guarantee we would be able to remediate such material weaknesses. Any material weaknesses in our internal controls may adversely affect our ability to record, process, summarize and accurately report timely financial information and, as a result, our consolidated financial statements may contain material misstatements or omissions.

Reporting obligations as a public company place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel. In addition, as a public company we are required to document and test our internal controls over

financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act so that our management can certify as to the effectiveness of our internal controls over financial reporting. Likewise, our independent registered public accounting firm is required to provide an attestation report on the effectiveness of our internal controls over financial reporting in our Annual Reports on Form 10-K. If our management is unable to certify the effectiveness of our internal controls or if our independent registered public accounting firm cannot deliver a report attesting to the effectiveness of our internal controls over financial reporting, or if we identify or fail to remediate material weaknesses in our internal controls, we could be subject to regulatory scrutiny and a loss of public confidence, which could seriously harm our reputation and the market price of our common stock. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could cause a decline in our common stock price and may seriously harm our business.

***We will incur significant expenses as a result of being a public company, which will negatively impact our financial performance.***

As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company. We are subject to the reporting requirements of the U.S. Exchange Act of 1934, as amended, or the Exchange Act, which will require, among other things, that we file with the SEC annual, quarterly and current reports with respect to our business and financial condition. In addition, the Sarbanes-Oxley Act, as well as rules subsequently adopted by the SEC and the stock exchange on which our securities are listed to implement provisions of the Sarbanes-Oxley Act, impose significant requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Further, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, the SEC has adopted additional rules and regulations in these areas, such as mandatory “say-on-pay” voting requirements. Stockholder activism, the current political environment and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact the manner in which we operate our business in ways we cannot currently anticipate.

The rules and regulations applicable to public companies have substantially increased our legal and financial compliance costs. If these requirements divert the attention of our management and personnel from other business concerns, they could seriously harm our business, financial condition and results of operations. The increased costs will decrease our net income or increase our net loss, and may require us to reduce costs in other areas of our business or increase the prices of our gear. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers. Further, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

***Our business could be negatively impacted by corporate citizenship and ESG matters and/or our reporting of such matters.***

Institutional, individual, and other investors, proxy advisory services, regulatory authorities, consumers and other stakeholders are increasingly focused on environmental, social and governance, or ESG, practices of companies. As we look to respond to evolving standards for identifying, measuring, and reporting ESG metrics, our efforts may result in a significant increase in costs and may nevertheless not meet investor or other stakeholder expectations and evolving standards or regulatory requirements, which may negatively impact our financial results, our reputation, our ability to attract or retain employees, our attractiveness as a service provider, investment, or business partner, or expose us to government enforcement actions, private litigation, and actions by stockholders or stakeholders.

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

None.

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

Not applicable.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**Item 5. Other Information**

None.

## Table of Contents

### Item 6. Exhibits.ad

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Date Filed	
3.1	<a href="#">Second Amended and Restated Certificate of Incorporation.</a>	8-K	3.1	09/25/2020	
3.2	<a href="#">Amended and Restated Bylaws.</a>	8-K	3.2	09/25/2020	
4.1	<a href="#">Form of common stock certificate of Registrant.</a>	S-1/A	4.2	09/18/2020	
4.2	<a href="#">Investor Rights Agreement, by and between Corsair Gaming, Inc. and Corsair Group (Cayman), LP.</a>	10-Q	4.2	11/10/2020	
4.3	<a href="#">Description of Corsair's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.</a>	10-K	4.3	03/11/2021	
4.4	<a href="#">Registration Rights Agreement, by and between Corsair Gaming, Inc. and Corsair Group (Cayman), LP.</a>	S-1/A	4.4	09/14/2020	
10.1	<a href="#">First Amendment, dated as of June 30, 2022, to Credit Agreement, dated as of September 3, 2021, by and among Corsair Gaming, Inc., as borrower, certain of its subsidiaries, as guarantors, the lender parties named therein, and Bank of America, N.A. as administrative agent.</a>				X
10.2	<a href="#">Non-Employee Director Compensation Policy.</a>				X
31.1	<a href="#">Certification of Principal Executive Officer under Securities Exchange Act Rule 13a-14(a) and 15d-14(a).</a>				X
31.2	<a href="#">Certification of Principal Financial Officer under Securities Exchange Act Rule 13a-14(a) and 15d-14(a).</a>				X
32.1*	<a href="#">Certifications of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. 1350 and Securities Exchange Act Rule 13a-14(b).</a>				X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)				X

\* The certification attached as Exhibit 32.1 that accompanies this Quarterly Report on Form 10-Q is not deemed filed with the SEC and is not to be incorporated by reference into any filing of Corsair Gaming, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.



**SIGNATURES**

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

Corsair Gaming, Inc.

Date: August 4, 2022

By: \_\_\_\_\_  
/s/ Michael G. Potter  
Michael G. Potter  
Chief Financial Officer, Treasurer  
*(Principal Financial Officer)*

Date: August 4, 2022

By: \_\_\_\_\_  
/s/ Gregg A. Lakritz  
Gregg A. Lakritz  
Vice President, Corporate Controller  
*(Principal Accounting Officer)*

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "Amendment") dated as of June 30, 2022 to the Credit Agreement referenced below is by and among CORSAIR GAMING, INC., a Delaware corporation (the "Borrower"), the Guarantors party hereto, the Lenders party hereto and BANK OF AMERICA, N.A., as Agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, credit facilities have been extended to the Borrower pursuant to that certain Credit Agreement (as amended, modified, supplemented and extended from time to time, the "Credit Agreement"), dated as of September 3, 2021, among the Borrower, the Guarantors party thereto, the Lenders party thereto and the Administrative Agent;

WHEREAS, the Borrower has requested certain modifications to the Credit Agreement, and Administrative Agent and the Lenders have agreed to make such requested modifications on the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement.

2. Amendments to the Credit Agreement.

2.1 The Credit Agreement, other than the Schedules and Exhibits thereto, is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underline text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Credit Agreement attached as Annex A hereto.

2.2 Exhibit G to the Credit Agreement is amended in its entirety to read in the form attached hereto as Annex B.

2.3 Exhibit N to the Credit Agreement is amended in its entirety to read in the form attached hereto as Annex C.

3. Conditions Precedent. This Amendment shall be effective on the first date each of the following conditions precedent has been satisfied:

(a) Receipt by the Administrative Agent of counterparts of this Amendment duly executed by the Borrower, the Guarantors, the Lenders and the Administrative Agent.

(b) The Borrower shall have paid to the Administrative Agent the fees set forth in that certain Fee Letter, dated as of the date hereof, between the Borrower and the Administrative Agent.

(c) The Borrower shall have paid all reasonable and documented out-of-pocket expenses of the Administrative Agent (including reasonable and documented fees and expenses of counsel to the

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Administrative Agent in respect of this Amendment) required to be paid on the date hereof to the extent invoiced in writing to the Borrower at least two (2) Business Days prior to the date hereof.

4. Amendment is a "Loan Document". This Amendment is a Loan Document and all references to a "Loan Document" in the Credit Agreement and the other Loan Documents (including, without limitation, all such references in the representations and warranties in the Credit Agreement and the other Loan Documents) shall be deemed to include this Amendment.

5. Representations and Warranties; No Default. Each Loan Party represents and warrants to the Administrative Agent and each Lender that, on and as of the date hereof, immediately after giving effect to this Amendment, (a) the representations and warranties of each Loan Party set forth in the Loan Documents to which it is a party are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date and (b) no Default exists.

6. Reaffirmation of Obligations. Each Loan Party (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) affirms all of its obligations under the Loan Documents (in the case of the Credit Agreement, as amended hereby) and (c) agrees that, except as expressly set forth herein, this Amendment and all documents, agreements and instruments executed in connection with this Amendment do not operate to reduce or discharge such Loan Party's obligations under the Loan Documents.

7. Reaffirmation of Security Interests. Each Loan Party (a) affirms that each of the Liens granted in or pursuant to the Loan Documents are valid and subsisting and (b) agrees that this Amendment and all documents, agreements and instruments executed in connection with this Amendment do not in any manner impair or otherwise adversely affect any of the Liens granted in or pursuant to the Loan Documents.

8. No Other Changes. Except as modified hereby, all of the terms and provisions of the Loan Documents shall remain in full force and effect.

9. Counterparts; Delivery. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment, or any certificate delivered hereunder, by fax transmission or e-mail transmission (*e.g.*, "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

10. Governing Law. This Amendment shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the laws of the State of New York.

[SIGNATURE PAGES FOLLOW]

Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

**BORROWER:**

**CORSAIR GAMING, INC.**

By: /s/ Michael G. Potter  
Name: Michael G. Potter  
Title: Chief Financial Officer

**GUARANTORS:**

**CORSAIR MEMORY, INC.**

By: /s/ Michael G. Potter  
Name: Michael G. Potter  
Title: Chief Financial Officer

**ORIGIN PC, LLC**

By: /s/ Andrew J. Paul  
Name: Andrew J. Paul  
Title: President

**SCUF GAMING INTERNATIONAL LLC**

By: /s/ Michael G. Potter  
Name: Michael G. Potter  
Title: Chief Financial Officer

[SIGNATURE PAGES CONTINUE]

CORSAIR GAMING, INC.  
FIRST AMENDMENT

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**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: /s/ Jason Eshler  
Name: Jason Eshler  
Title: VP

CORSAIR GAMING, INC.  
FIRST AMENDMENT

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Annex A

Amended Credit Agreement

See attached.

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**CREDIT AGREEMENT**

Dated as of September 3, 2021

among

**CORSAIR GAMING, INC.,**  
as the Borrower,

**THE SUBSIDIARIES OF THE BORROWER PARTY HERETO,**  
as the Guarantors,

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

and

**THE LENDERS PARTY HERETO**

**BOFA SECURITIES, INC.,**  
as Sole Lead Arranger and Sole Bookrunner

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## TABLE OF CONTENTS

	<i>Page</i>
Article I DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms.	1
1.02 Other Interpretive Provisions	46
1.03 Accounting Terms.	48
1.04 Rounding.	49
1.05 Times of Day.	49
1.06 Letter of Credit Amounts.	50
1.07 UCC Terms.	50
1.08 Rates.	50
Article II COMMITMENTS AND CREDIT EXTENSIONS	50
2.01 Loans.	50
2.02 Borrowings, Conversions and Continuations of Loans.	51
2.03 Letters of Credit.	57
2.04 Swingline Loans.	64
2.05 Prepayments.	67
2.06 Termination or Reduction of Commitments.	70
2.07 Repayment of Loans	71
2.08 Interest and Default Rate.	72
2.09 Fees.	72
2.1 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.	73
2.11 Evidence of Debt.	73
2.12 Payments Generally; Administrative Agent's Clawback.	74
2.13 Sharing of Payment by Lenders	76
2.14 Cash Collateral.	77
2.15 Defaulting Lenders.	78
Article III TAXES, YIELD PROTECTION AND ILLEGALITY	80
3.01 Taxes.	80
3.02 Illegality.	84
3.03 Inability to Determine Rates.	84
3.04 Increased Costs; Reserves on Eurodollar Rate Loans.	87
3.05 Compensation for Losses.	88
3.06 Mitigation Obligations; Replacement of Lenders.	89
3.07 Survival.	89
Article IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	90
4.01 Conditions of Initial Credit Extension.	90
4.02 Conditions to all Credit Extensions.	92
Article V REPRESENTATIONS AND WARRANTIES	92
5.01 Existence, Qualification and Power.	93
5.02 Authorization; No Contravention.	93
5.03 Governmental Authorization; Other Consents.	93
5.04 Binding Effect.	93
5.05 Financial Statements; No Material Adverse Effect.	94
5.06 Litigation.	94
5.07 No Default.	94
5.08 Ownership of Property	94
5.09 Environmental Compliance.	94



5.1	Insurance.	95
5.11	Taxes.	95
5.12	ERISA Compliance.	95
5.13	Margin Regulations; Investment Company Act.	96
5.14	Disclosure.	96
5.15	Compliance with Laws.	96
5.16	Solvency.	97
5.17	Sanctions Concerns and Anti-Corruption Laws.	97
5.18	Subsidiaries; Equity Interests; Loan Parties	97
5.19	Collateral Representations.	98
5.2	Affected Financial Institutions.	98
5.21	Covered Entities.	98
5.22	Beneficial Ownership Certification.	98
Article VI AFFIRMATIVE COVENANTS		98
6.01	Financial Statements.	98
6.02	Certificates; Other Information.	99
6.03	Notices.	101
6.04	Payment of Obligations.	102
6.05	Preservation of Existence, Etc.	102
6.06	Maintenance of Properties	102
6.07	Maintenance of Insurance.	103
6.08	Compliance with Laws.	103
6.09	Books and Records.	103
6.1	Inspection Rights.	104
6.11	Use of Proceeds	104
6.12	Covenant to Guarantee Obligations.	104
6.13	Covenant to Give Security.	105
6.14	Anti-Corruption Laws; Sanctions.	106
6.15	Further Assurances.	106
6.16	Post-Closing Covenant.	107
Article VII NEGATIVE COVENANTS		107
7.01	Liens.	107
7.02	Indebtedness.	109
7.03	Investments.	111
7.04	Fundamental Changes.	113
7.05	Dispositions.	114
7.06	Restricted Payments	114
7.07	Change in Nature of Business.	115
7.08	Transactions with Affiliates.	115
7.09	Burdensome Agreements.	116
7.1	Use of Proceeds	117
7.11	Financial Covenants.	117
7.12	Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.	117
7.13	Prepayments, Etc. of Indebtedness.	118
7.14	Sale and Leaseback Transactions.	118
7.15	Sanctions.	118
7.16	Anti-Corruption Laws.	119
Article VIII EVENTS OF DEFAULT AND REMEDIES		199

8.01	Events of Default.	119
8.02	Remedies upon Event of Default.	121
8.03	Application of Funds.	122
Article IX ADMINISTRATIVE AGENT		123
9.01	Appointment and Authority.	123
9.02	Rights as a Lender.	124
9.03	Exculpatory Provisions	124
9.04	Reliance by Administrative Agent.	125
9.05	Delegation of Duties.	125
9.06	Resignation of Administrative Agent.	126
9.07	Non-Reliance on Administrative Agent, the Arranger and the Other Lenders.	127
9.08	No Other Duties, Etc.	128
9.09	Administrative Agent May File Proofs of Claim; Credit Bidding	128
9.1	Collateral and Guaranty Matters.	130
9.11	Secured Cash Management Agreements and Secured Hedge Agreements.	130
9.12	Certain ERISA Matters.	131
Article X CONTINUING GUARANTY		132
10	Guaranty.	132
10	Rights of Lenders.	132
10	Certain Waivers.	133
10	Obligations Independent.	133
10.1	Subrogation.	133
10.1	Termination; Reinstatement.	133
10.1	Stay of Acceleration.	134
10.1	Condition of Borrower.	134
10.1	Appointment of Borrower.	134
10.1	Right of Contribution.	134
10.1	Keepwell.	134
Article XI MISCELLANEOUS		135
11	Amendments, Etc.	135
11	Notices; Effectiveness; Electronic Communications.	137
11	No Waiver; Cumulative Remedies; Enforcement.	139
11	Expenses; Indemnity; Damage Waiver.	140
11.1	Payments Set Aside.	142
11.1	Successors and Assigns.	142
11.1	Treatment of Certain Information; Confidentiality.	148
11.1	Right of Setoff.	150
11.1	Interest Rate Limitation.	150
11.1	Counterparts; Integration; Effectiveness.	150
11.1	Survival of Representations and Warranties.	151
11.1	Severability.	151
11.1	Replacement of Lenders.	151
11.1	Governing Law; Jurisdiction; Etc.	152
11.2	Waiver of Jury Trial.	153
11.2	Subordination.	154
11.2	No Advisory or Fiduciary Responsibility.	154
11.2	Electronic Execution; Electronic Records.	155
11.2	USA Patriot Act Notice.	155
11.2	Acknowledgement and Consent to Bail-In of Affected Financial Institutions.	155

11.2	Acknowledgement Regarding Any Supported QFCs.
11.2	ENTIRE AGREEMENT.

156
157

## BORROWER PREPARED SCHEDULES

Schedule 5.18(a)	Subsidiaries, Joint Ventures, Partnerships and Other Equity Investments
Schedule 5.18(b)	Loan Parties
Schedule 5.19(b)	Intellectual Property
Schedule 5.19(c)	Real Properties
Schedule 7.01	Existing Liens
Schedule 7.02	Existing Indebtedness
Schedule 7.03	Existing Investments
Schedule 7.08	Existing Affiliate Transactions

## ADMINISTRATIVE AGENT PREPARED SCHEDULES

Schedule 1.01(a)	Certain Addresses for Notices
Schedule 1.01(b)	Initial Commitments and Applicable Percentages
Schedule 1.01(c)	Mortgaged Property Support Documents
Schedule 2.01	Swingline Commitments
Schedule 2.03	Letter of Credit Commitments
Schedule 6.16	Post-Closing Schedule

## EXHIBITS

Exhibit A	Form of Administrative Questionnaire
Exhibit B	Form of Assignment and Assumption
Exhibit C	Form of Compliance Certificate
Exhibit D	Form of Incremental Term Note
Exhibit E	[Reserved]
Exhibit F	Form of Joinder Agreement
Exhibit G	Form of Loan Notice
Exhibit H	Form of Revolving Note
Exhibit I	Form of Secured Party Designation Notice
Exhibit J	Form of Swingline Loan Notice
Exhibit K	Form of Term Note
Exhibit L	Forms of U.S. Tax Compliance Certificates
Exhibit M	[Reserved]
Exhibit N	Form of Notice of Loan Prepayment

## CREDIT AGREEMENT

This **CREDIT AGREEMENT** is entered into as of September 3, 2021 among Corsair Gaming, Inc., a Delaware corporation (the "**Borrower**"), the Guarantors (defined herein), the Lenders (defined herein), and BANK OF AMERICA, N.A., as Administrative Agent, Swingline Lender and L/C Issuer.

### PRELIMINARY STATEMENTS:

**WHEREAS**, the Loan Parties (as hereinafter defined) have requested that the Lenders, the Swingline Lender and the L/C Issuer make loans and other financial accommodations to the Loan Parties in a principal amount of up to \$350,000,000.

**WHEREAS**, the Lenders, the Swingline Lender and the L/C Issuer have agreed to make such loans and other financial accommodations to the Loan Parties on the terms and subject to the conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

#### **1.01**            Defined Terms.

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

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

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

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

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“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

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

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

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement, including all schedules, exhibits and annexes hereto.

“All-in-Yield” means as to any Indebtedness the yield to maturity thereof, whether in the form of interest rate margin, original issue discount, upfront fees, any interest rate floors or similar devices, or otherwise, in each case payable generally to Lenders making such Loans, but excluding any arrangement, structuring, underwriting or other fees payable in connection therewith that are not generally shared with the relevant Lenders and customary consent fees paid generally to consenting Lenders.

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

“Applicable Percentage” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Term Lender’s Term Commitment at such time and (ii) thereafter, the outstanding principal amount of such Term Lender’s Term Loans at such time, (b) in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15 and (c) in respect of an Incremental Term Facility, with respect to any Incremental Term Lender under such Incremental Term Facility at any time, the percentage (carried out to the ninth decimal place) of such Incremental Term Facility represented by the outstanding principal amount of such Incremental Term Lender’s Incremental Term Loan advanced under such Incremental Term Facility at such time. If the Commitment of all of the Revolving Lenders to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments and to any Lender’s status as a Defaulting Lender at the time of determination. The Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.17, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Total Net Leverage Ratio), it being understood that the Applicable Rate with respect to (a) Incremental Term Loans advanced under any Incremental Term Facility, the percentage(s) per annum set forth in the Incremental Term Facility Agreement executed and delivered

in connection with the establishment of such Incremental Term Facility, (b) Revolving Loans that are Base Rate Loans shall be the percentage set forth under the column “Revolving Loans” and “Base Rate”, (c) Revolving Loans that are EurodollarBSBY Rate Loans shall be the percentage set forth under the column “Revolving Loans” and “EurodollarBSBY Rate & Letter of Credit Fee”, (d) that portion of the Term Loan comprised of Base Rate Loans shall be the percentage set forth under the column “Term Loan” and “Base Rate”, (e) that portion of the Term Loan comprised of EurodollarBSBY Rate Loans shall be the percentage set forth under the column “Term Loan” and “EurodollarBSBY Rate & Letter of Credit Fee”, (f) the Letter of Credit Fee shall be the percentage set forth under the column “Revolving Loans” and “EurodollarBSBY Rate & Letter of Credit Fee”, and (g) the Commitment Fee shall be the percentage set forth under the column “Commitment Fee”:

Level	Consolidated Total Net Leverage Ratio	EurodollarBSBY Rate & Letter of Credit Fee		Base Rate		Commitment Fee
		Revolving Loans	Term Loan	Revolving Loans	Term Loan	
<u>1</u>	> 3.00 to 1.0	2.250%	2.250%	1.250%	1.250%	0.400%
<del>2</del>	< 3.00 to 1.0 but ≥ 2.50 to 1.0	2.000%	2.000%	1.000%	1.000%	0.350%
<del>3</del>	< 2.50 to 1.0 but ≥ 2.00 to 1.0	1.750%	1.750%	0.750%	0.750%	0.300%
<del>4</del>	< 2.00 to 1.0 but ≥ 1.00 to 1.0	1.500%	1.500%	0.500%	0.500%	0.250%
<del>5</del>	< 1.00 to 1.0	1.250%	1.250%	0.250%	0.250%	0.200%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with Section 6.02(b), then, upon the request of the Required Lenders, Pricing Level 1 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, (i) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b) and (ii) the initial Applicable Rate shall be set at Pricing Level 4 until the first Business Day immediately following the date a Compliance Certificate is delivered to the Administrative Agent pursuant to Section 6.02(b) for the fiscal quarter ending September 30, 2021. Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“*Applicable Revolving Percentage*” means with respect to any Revolving Lender at any time, such Revolving Lender’s Applicable Percentage in respect of the Revolving Facility at such time.

“*Appropriate Lender*” means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the Revolving Lenders and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

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

“Approved Jurisdiction” means each of each of Canada, Hong Kong, the United Kingdom, Luxembourg, Germany and the Netherlands, in each case, including any states, provinces or other similar local units therein; provided that, at the time of any Subsidiary from an Approved Jurisdiction being designated as a Designated Foreign Subsidiary Guarantor by the Borrower, (a) neither the Administrative Agent nor any Lender shall be prohibited by Applicable Law or generally applicable internal policy (including as a result of any political risk associated with such Approved Jurisdiction at such time) from having a Person from such jurisdiction becoming a Guarantor and providing a Guarantee of the Obligations, or taking a lien in the assets of such Person (other than Excluded Property) to secure the Obligations, and (b) the Administrative Agent shall have determined, in its reasonable good faith discretion, that (i) at such time, the Applicable Law in such jurisdiction does not materially and adversely effect, (A) the amount and enforceability of a Guaranty to be entered into by a Person organized in such Approved Jurisdiction, or (B) the security interests (and enforceability thereof) to be granted with respect to assets (or various classes of assets) of such Person located in such Approved Jurisdiction, and (ii) there has not been any material and adverse change since the Closing Date in any political risk associated with such jurisdiction; *provided, further*, that, from time to time after the Closing Date, the Borrower may request (by written notice to the Administrative Agent) that one or more additional jurisdictions be added to the list of Approved Jurisdictions, it being understood that, in such event, such jurisdictions shall be added to (and thereafter form part of) the list of Approved Jurisdictions, so long as, in each case, the respective jurisdiction to be added is a jurisdiction reasonably satisfactory to the Administrative Agent (it being agreed that such determination shall be based upon, without limitation, (x) the amount and enforceability of the Guaranty that may be entered into by such Person organized in such jurisdiction, (y) the security interests (and enforceability thereof) that may be granted with respect to assets (or various classes of assets) located in such jurisdiction and (z) any political risk associated with such jurisdiction).

“Arranger” means BofA Securities, Inc., in its capacity as sole lead arranger and sole bookrunner.

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

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

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020, and the related Consolidated statements of income or operations, Shareholders’ Equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b).

~~“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period~~



~~for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

“Availability Period” means in respect of the Revolving Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Facility, (ii) the date of termination of the Revolving Commitments pursuant to Section 2.06, and (iii) the date of termination of the Commitment of each Revolving Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

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

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

“Bank of America” means Bank of America, N.A. and its successors.

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

“Base Rate Loan” means a Revolving Loan, Term Loan or an Incremental Term Loan that bears interest based on the Base Rate.

~~“Benchmark” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(e) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.~~

~~“Benchmark Replacement” means:~~

- ~~(1) For purposes of Section 3.03(e)(i), the first alternative set forth below that can be determined by the Administrative Agent:~~
- ~~(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available~~

Tenor of six-months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months' duration, or

- (b) the sum of: (i) Daily Simple SOFR and (ii) 0.26161% (26.161 basis points);

~~provided~~ that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

- (2) For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

~~provided~~ that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 0%, the Benchmark Replacement will be deemed to be 0% for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; ~~provided~~ that to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

~~“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate”, the definition of “Business Day”, the definition of “Interest Period”, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).~~

~~“Benchmark Transition Event” means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.~~

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

“Bloomberg” means Bloomberg Index Services Limited.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02(p).

“Borrowing” means a Revolving Borrowing, a Swingline Borrowing, a Term Borrowing or an Incremental Term Borrowing, as the context may require.

“BSBY” means the Bloomberg Short-Term Bank Yield Index rate.

“BSBY Rate” means:

- (a) for any Interest Period with respect to a BSBY Rate Loan, the rate per annum equal to the BSBY Screen Rate two Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published on such determination date then BSBY Rate means the BSBY Screen Rate on the first Business Day immediately prior thereto; and
- (b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the BSBY Screen Rate with a term of one month commencing that day;

provided that if the BSBY Rate determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, the BSBY Rate shall be deemed zero for purposes of this Agreement.

“BSBY Rate Loan” means a Revolving Loan, a Term Loan or an Incremental Team Loan that bears interest at a rate based on clause (a) of the definition of BSBY Rate.

“BSBY Screen Rate” means the Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any BSBY Rate Loan, in New York City.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset, but excluding (a) normal

replacements and maintenance which are properly charged to current operations, (b) expenditures made in connection with the reinvestment of Disposition proceeds pursuant to Section 2.05(b)(i) or in connection with the replacement, substitution or restoration of property in connection with an Involuntary Disposition, (c) expenditures made to fund the purchase price for assets acquired in Permitted Acquisitions, and (d) leasehold improvement expenditures that are actually paid for by unaffiliated third party landlords in the ordinary course of business and which neither the Borrower nor any Subsidiary has provided or is required to provide or incur any consideration or obligation to such third party landlord. For purposes of this definition, the purchase price of equipment or other fixed assets that are purchased simultaneously with the trade-in of existing assets or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such assets for the assets being traded in at such time or the amount of such insurance proceeds, as the case may be.

“Capitalized Lease” means any lease that has been or is required to be, in accordance with GAAP, recorded, classified and accounted for as a capitalized lease or financing lease.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or Swingline Lender (as applicable) or the Lenders, as Collateral for L/C Obligations, the Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of L/C Obligations or Swingline Loans (as the context may require), (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts reasonably satisfactory to the Administrative Agent and the applicable L/C Issuer, and/or (c) if the Administrative Agent and the applicable L/C Issuer or Swingline Lender shall agree, in their reasonable discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer or the Swingline Lender (as applicable).

“Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of issuance thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;
- (b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than ninety (90) days from the date of issuance thereof;
- (c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of issuance thereof;

- (d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and at least 90% of the assets of which are invested in Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; and
- (e) instruments equivalent to those referred to in clauses (a) through (d) above denominated in Euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

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

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

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code in which the Borrower or any Loan Party is a United States shareholder within the meaning of Section 951(b) of the Code.

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

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

- (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or

administrator of any such plan) other than the Permitted Equity Investors becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”); *provided* that a Person shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement unless such Person has the right to vote or direct the voting of such securities), directly or indirectly, of thirty-five percent (35%) or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

- (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was nominated, appointed or approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Term Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or Term Commitment.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages (if any), any related Mortgaged Property Support Documents, each Joinder Agreement, each of the collateral assignments, security agreements, pledge agreements, account control agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien securing the Secured Obligations in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment, Revolving Commitment or an Incremental Term Commitment, as the context may require.

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

“Competitor” means any competitor of the Borrower or any of its Subsidiaries that is in the same or a similar line of business as the Borrower or any of its Subsidiaries.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

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

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means, for any period, for the Borrower on a Consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following (without duplication) to the extent (other than the case of clause (iv) below) deducted in calculating such Consolidated Net Income, all as determined in accordance with GAAP:

- (i) Consolidated Interest Charges for such period;
- (ii) the provision for federal, state, local and foreign income taxes payable by the Borrower for such period;
- (iii) depreciation and amortization expense for such period;
- (iv) the amount of net “run rate” cost savings, operating expense reductions and synergies for such period projected by the Borrower in good faith to be realized as a result of actions which have been taken, which are committed to be taken or which the Borrower expects to be taken in connection with Acquisitions, divestitures, other specified transactions, restructurings, cost savings initiatives and other initiatives or otherwise, in each case, after the Closing Date, net of the amount of actual benefits realized during such period from such actions; *provided*, that (A) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent together with the Compliance Certificate required to be delivered pursuant to Section 6.02, certifying that such cost savings, operating expense reductions and synergies (x) are reasonably anticipated to be realized within twelve (12) months (or if in connection with an Acquisition with a Cost of Acquisition in excess of \$150,000,000, eighteen (18) months) after the consummation of the action which is expected to result in such cost savings, operating expense reductions or synergies and (y) are factually supportable as determined in good faith by the Borrower, (B) no cost savings, operating expense reductions or synergies shall be added pursuant to this clause (a)(iv) to the extent duplicative of any expenses or charges otherwise added to, or included in, Consolidated Net Income, whether through a pro forma adjustment or otherwise, for such period, and (C) projected amounts (that are not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (a)(iv) to the extent occurring more than

twelve (12) months (or if in connection with an Acquisition with a Cost of Acquisition in excess of \$150,000,000, eighteen (18) months) after the specified action taken in order to realize such projected cost savings, operating expense reductions or synergies;

- (v) all unusual or non-recurring losses, costs, charges and expenses for such period;
- (vi) restructuring charges, severance, relocation costs, integration and facilities opening costs, and other business optimization expenses, product launch costs, research and development costs for new products, marketing expenses for new products, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of facilities and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), in each case, for such period;
- (vii) (A) fees, costs and expenses incurred for such period in connection with obtaining the Facilities and the negotiation, execution and delivery of the Loan Documents; *provided* such fees, costs and expenses are incurred prior to, or within six (6) months of, the Closing Date, and (B)(x) fees, costs and expenses for such period incurred in connection with any Investment, any issuance of Indebtedness or Equity Interests, any Disposition or any Involuntary Disposition, in each case, whether or not consummated, (y) fees, costs and expenses for such period incurred in connection with any amendments to, or consents or waivers under, documentation governing transactions described in this clause (B) (including the Loan Documents and any documentation governing any Indebtedness permitted hereunder) and (z) fees, costs and expenses to the extent indemnified by a third party (for the avoidance of doubt, other than the Borrower), so long as such amounts are actually reimbursed to the Borrower in cash within one (1) year after the related amount is first added to Consolidated EBITDA pursuant to this clause (a)(vii)(B)(z). (and if not so reimbursed within one year, such amount shall be deducted from Consolidated EBITDA during the next Measurement Period);
- (viii) proceeds from business interruption insurance received in such period in an amount representing the earnings for such period that such proceeds are intended to replace (to the extent not reflected as revenue or income in Consolidated Net Income and to the extent that the related loss was deducted in the determination of Consolidated Net Income);
- (ix) non-cash stock based compensation expenses for such period;
- (x) the amount of any earn-out obligations that become due and payable and are paid or accrue during such period;
- (xi) realized foreign exchange losses resulting from the impact of foreign currency changes and related tax effects determined in accordance with GAAP on the valuation of assets or liabilities on the balance sheet of the Borrower and its Subsidiaries, and any exchange, translation or performance losses relating to any foreign currency hedging transactions for such period;
- (xii) any losses during such period resulting from the Disposition of any asset of the Borrower outside of the ordinary course of business, including, without limitation, any net loss from discontinued operations and any net loss on the disposal of discontinued operations; and
- (xiii) any other non-cash charges, expenses or losses for such period (excluding write-downs of accounts receivable and any other non-cash charges, expenses or losses to the extent representing accruals of or reserves for cash expenses in any future period or an amortization of a prepaid cash expense);



minus

(b) the following (without duplication) to the extent included in calculating such Consolidated Net Income, all as determined in accordance with GAAP:

(i) all non-cash income or gains for such period;

(ii) any gains during such period resulting from the Disposition of any asset of the Borrower outside of the ordinary course of business, including, without limitation, any net income or gain from discontinued operations and any net income or gain on the disposal of discontinued operations;

(iii) realized foreign exchange income or gains resulting from the impact of foreign currency changes and related tax effects determined in accordance with GAAP on the valuation of assets or liabilities on the balance sheet of the Borrower and its Subsidiaries, and any exchange, translation or performance income or gains relating to any foreign currency hedging transactions for such period; and

(iii) federal, state, local and foreign income tax credits of the Borrower during such period;

Notwithstanding the foregoing, it is understood and agreed that the aggregate amount added back pursuant to clauses (a)(iv), (a)(v) and (a)(vi) for any period shall not exceed twenty percent (20%) of Consolidated EBITDA for such period prior to giving effect to all such add-backs for such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a Consolidated basis, the *sum of*: (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) all obligations in respect of unreimbursed drawings under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations in respect of the deferred purchase price of property or services (other than (i) trade accounts and other accounts payable in the ordinary course of business, (ii) deferred compensation accruals for payroll and accrued expenses in the ordinary course of business, and (iii) Earn Out Obligations to the extent not then due and payable and unpaid); (e) all Attributable Indebtedness; (f) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Borrower or any Subsidiary; and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company or other limited liability legal entity) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

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

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the Measurement Period most recently completed on or prior to such date, to (b) Consolidated Interest Charges paid in cash for the Measurement Period most recently completed on or prior to such date.

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

“Consolidated Total Assets” means the total assets of the Borrower and its Subsidiaries on a Consolidated basis.

“Consolidated Total Net Leverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated Funded Indebtedness as of such date *minus* (ii) Unrestricted Cash as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

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

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

“Controlled Investment Affiliate” means, as applied to any Person, any other Person which directly or indirectly is in Control of, is Controlled by, or is under common Control with, such Person and is organized by such Person (or any Person Controlling, Controlled by or under common Control with such Person) primarily for making equity or debt investments in the Borrower or other portfolio companies of such Person.

“Convertible Indebtedness” means Indebtedness the terms of which entitle the holder thereof to convert or exchange all or a portion of such Indebtedness into (x) cash, (y) Qualified Equity Interests of the Borrower or (z) a combination thereof (with the amount of such cash or such combination determined by reference to the market price of the Qualified Equity Interests of the Borrower).

“Cost of Acquisition” for any Acquisition means the purchase consideration for such Acquisition, whether paid in cash or by exchange of Equity Interests (other than Equity Interests of the Borrower) or of properties or otherwise and whether payable at or prior to the consummation of such Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any

contingency, and shall include any and all payments representing the purchase price and any assumptions of Indebtedness, deferred purchase price, Earn Out Obligations and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person; *provided* that, the value of any Equity Interests of the Borrower transferred as consideration in connection with any such Acquisition shall not be included in the Cost of Acquisition. For purposes of determining the aggregate consideration paid for any Acquisition, the amount of any Earn Out Obligations shall be deemed to be the maximum amount of the earn out payments in respect thereof as specified in the documents relating to such Acquisition or readily determinable therefrom, or, if not stated or determinable, the maximum reasonably anticipated amount as determined by the Borrower in good faith.

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

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

“Daily Simple SOFR” with respect to any applicable determination date means the secured overnight financing rate (“SOFR”) published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source).

“Debt Issuance” means the issuance by any Loan Party or any Subsidiary of any Indebtedness other than Indebtedness permitted under Section 7.02.

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

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

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

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

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swingline Lender in

writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

*“Designated Foreign Subsidiary Guarantor”* means any Foreign Subsidiary that has been designated as such by the Borrower in writing to the Administrative Agent to be joined to this Agreement as a Guarantor pursuant to Section 6.13; *provided, however*, that (i) a Designated Foreign Subsidiary Guarantor must be domiciled in an Approved Jurisdiction, and (ii) at the time of the designation of a Foreign Subsidiary as a Designated Foreign Subsidiary Guarantor (and as a condition to the effectiveness of such designation), the Administrative Agent shall have determined, in its reasonable discretion, that no circumstances exist with respect to the proposed Foreign Subsidiary and the proposed Guaranty by such Foreign Subsidiary, including its involvement in specific prior or proposed transactions, or the application of Applicable Law in such Approved Jurisdiction to such Foreign Subsidiary (including, financial assistance restrictions, capital maintenance requirements, consideration requirements and other similar Laws) that would have a material and adverse effect on (i) the enforceability and maximum principal amount of the Guaranty of such Foreign Subsidiary, or (ii) the security interests (and enforceability thereof) to be granted with respect to assets (or classes of assets) of such Foreign Subsidiary.

*“Designated Jurisdiction”* means any country or territory to the extent that such country or territory is the subject of any Sanction.

*“Designated Non-Cash Consideration”* means the estimated fair market value (as determined by the Borrower in good faith) of non-cash consideration received by the Borrower or any Subsidiary in connection with a Disposition made pursuant to Section 7.05 that is designated as “Designated Non-Cash Consideration” on the date received pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such estimated fair market value.

*“Disposition”* or *“Dispose”* means the sale, transfer, license, lease or other disposition (including (x) any Sale and Leaseback Transaction and (y) any issuance by any Subsidiary of its Equity Interests (but

excluding, for the avoidance of doubt, any issuance by the Borrower of its Equity Interests)) of any property by any Loan Party or any Subsidiary (or the granting of any option or other right to do any of the foregoing), excluding (a) sales, transfers, licenses, leases or other dispositions of inventory in the ordinary course of business by the Borrower, (b) sales, transfers, licenses, leases or other dispositions of used, worn out, obsolete or surplus property by the Borrower in the ordinary course of business and the lapse or abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of the Borrower, immaterial or no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Subsidiaries taken as a whole, (c) sales, transfers, licenses, leases or other dispositions of property to any Loan Party, (d) the granting, existence or creation of a Lien (but not the sale or other disposition of the property subject to such Lien) permitted by Section 7.01, (e) sales of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale are promptly applied to the purchase price of such replacement property, (f) any Involuntary Disposition, (g) to the extent constituting Dispositions, Investments permitted under Section 7.03, fundamental changes permitted under Section 7.04, Restricted Payments permitted under Section 7.06 and Involuntary Dispositions, in each case, except by reference to Section 7.05 or this definition (or any clause hereof or thereof), (h) the licensing, on a non-exclusive basis, of Intellectual Property, (i) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof, (j) leases or subleases of real property entered into in the ordinary course of business, (k) the surrender or waiver of contractual rights or the settlement, release or surrender of contract or tort claims, in each case, in the ordinary course of business or in the commercially reasonable judgment of the Borrower or the applicable Subsidiary, (l) dispositions of cash and Cash Equivalents in the ordinary course of business, (m) the sale, transfer, issuance or other disposition of a de minimis number of shares of the Equity Interests of a Foreign Subsidiary in order to qualify members of the governing body of such Subsidiary if required by applicable Law, (n) dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements and (o) the unwinding of any Swap Contract pursuant to its terms.

“Disqualified Equity Interest” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable by the holder thereof, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the one hundred eighty-first (181<sup>st</sup>) day after the Latest Maturity Date, (b) requires the payment of any cash dividends at any time prior to the one hundred eighty-first (181<sup>st</sup>) day after the Latest Maturity Date, (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations (other than contingent indemnification and expense reimbursement obligations), or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) Equity Interests described in clause (a), (b) or (c) above, in each case at any time prior to the one hundred eighty-first (181<sup>st</sup>) day after the Latest Maturity Date; *provided, that*, any Equity Interest that would not constitute a Disqualified Equity Interest but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interest is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interest upon the occurrence of a change in control or an asset sale occurring prior to the one hundred eighty-first (181<sup>st</sup>) day after the Latest Maturity Date shall not constitute a Disqualified Equity Interest if such Equity Interest provides that the issuer thereof will not redeem or repurchase such Equity Interest pursuant to such provisions prior to the Facility Termination Date.

“Disqualified Institution” means, on any date, (a) any Competitor that has been identified by legal name in writing by the Borrower and delivered to the Administrative Agent at least two (2) Business Days prior to such date, (b) any Person that has been identified by legal name in writing by the Borrower and delivered to the Administrative Agent prior to the Closing Date, and (c)(i) any Affiliate of any Competitor or other Person identified pursuant to clause (a) or (b) above that is reasonably identifiable (based solely on

the basis of the legal name of such Affiliate) as an Affiliate of any such Competitor or Person, or (ii) any Affiliate of any Competitor referred to in clause (a) above or any Person referred to in clause (b) above that, in each case, is identified by legal name in writing by the Borrower and delivered to the Administrative Agent at least two (2) Business Days prior to such date; provided, that, the foregoing shall not apply to (A) retroactively disqualify any Person that has previously acquired an assignment or participation in the Loans and/or Commitments to the extent that such Person was not a Disqualified Institution at the time of the applicable assignment or participation, (B) exclude any bona fide fixed income investor or debt fund that is primarily and generally engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, notes, bonds and similar extensions of credit or securities in the ordinary course of its business and whose managers are not involved with the equity investment decisions of any other entity described in clause (a), (b) or (c) above, or (C) exclude any Person that the Borrower designates in writing delivered to the Administrative Agent as no longer being a “Disqualified Institution.”

“Dollar” and “₳” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, any state or commonwealth thereof or the District of Columbia.

“DQ List” has the meaning specified in Section 11.06(g)(iv).

~~“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

~~“Early Opt-in Election” means the occurrence of:~~

~~(a) a determination by the Administrative Agent, or a notification by the Borrower to the Administrative Agent that the Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and~~

~~(b) the joint election by the Administrative Agent and the Borrower to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

“Earn Out Obligations” means, with respect to an Acquisition, all obligations of the Borrower or any Subsidiary to make earn out or other contingency payments (including working capital and similar purchase price adjustments, but excluding non-competition and consulting agreements and indemnity obligations) pursuant to the documentation relating to such Acquisition.

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

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

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

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 11.06(g).

“Engagement Letter” means the letter agreement, dated July 30, 2021, between the Borrower, the Administrative Agent and the Arranger.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, standards, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to hazardous materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, or release or threatened release of Hazardous Materials, air emissions and discharges to waste or public systems, in each case, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

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

“Environmental Permit” means any permit, certification, registration, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided, however*, that, “Equity Interests” shall not include any Permitted Convertible Indebtedness permitted hereunder (except to the extent such Indebtedness is converted or exchanged into Qualified Equity Interests of the Borrower in accordance with the terms thereof).

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan (within the meaning of Section 430 of the Code or Section 303 of ERISA) or a Multiemployer Plan is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

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

~~“Eurodollar Rate” means:~~

~~(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) (“LIBOR”), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) London Banking Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;~~

~~provided that, if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.~~

~~“Eurodollar Rate Loan” means a Revolving Loan, a Term Loan or an Incremental Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate”.~~

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Property” means, with respect to any Loan Party, (a) (i) any leasehold interest in real property and (ii) any owned real property (x) located outside of the United States or (y) with a fair market value (as determined by the purchase price thereof or otherwise by the good faith business judgment of the Borrower) of less than \$5,000,000, (b) other than with respect to assets of a Designated Foreign Subsidiary



Guarantor, any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (i) governed by the Uniform Commercial Code or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (c) the Equity Interests of any Foreign Subsidiary or FSHCO to the extent not required to be pledged to secure the Secured Obligations pursuant to Section 6.13(a), (d) any property which, subject to the terms of Section 7.02(c), is subject to a Lien of the type described in Section 7.01(h) pursuant to documents that prohibit such Loan Party from granting any other Liens in such property, (e) any assets as to which the Administrative Agent and the Borrower agree in writing that the costs or other consequences (including any adverse tax consequences) of obtaining a security interest or perfection thereof are excessive in view of the benefits to be obtained by the Secured Parties therefrom, (f) any “intent-to-use” application for registration of a Trademark (as defined in the Security Agreement) of such Loan Party filed in the United States Patent and Trademark Office pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely 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 any registration that issues from such intent-to-use application under applicable federal law, (g) any Equity Interest owned (i) in any Person that is not a Subsidiary or (ii) in any Subsidiary that is not a Material Wholly Owned Subsidiary, (h) the cash collateral pledged in respect of the letter of credit identified on Schedule 7.02, the account into which such cash collateral is deposited and all assets deposited in or credited thereto, and (i) assets to the extent which the granting of security interests in such assets would be prohibited by or would breach or (in the case of Contractual Obligations, permits, licenses and the like) cause the termination or revocation of any Contractual Obligation permitted under the terms of this Agreement (not entered into in contemplation thereof and with respect to assets that are subject to such Contractual Obligations), applicable Law or regulation (other than to the extent that any such Law, rule, regulation, term, prohibition or condition would be rendered ineffective pursuant to the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable Law (including the Bankruptcy Code) or principles of equity, and other than receivables and proceeds of any of the foregoing the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such Law, rule, regulation, term, prohibition or condition), or would require governmental or third party (other than the Borrower or any Subsidiary) consent, approval, license or authorization or create a right of termination in favor of any Person (other than the Borrower or any Subsidiary) party to any such Contractual Obligation (after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law and other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition); provided that immediately upon the ineffectiveness, lapse or termination of any such Law, rule, regulation, term, prohibition, condition or provision the Collateral shall include, and such Person shall be deemed to have granted a security interest under the Collateral Documents in, all such assets, and rights and interests therein, as if such Law, rule, regulation, term, prohibition, condition or provision had never been in effect; provided that Excluded Property shall not include any proceeds of any such assets described in clauses (a) through (i) above, except to the extent such proceeds constitute Excluded Property.

“Excluded Subsidiary” means (a) any Immaterial Subsidiary (unless the Borrower elects otherwise with respect thereto), (b) any Subsidiary that is not a Wholly Owned Subsidiary, (c) any Foreign Subsidiary (other than a Designated Foreign Subsidiary Guarantor), (d) any FSHCO, (e) any Subsidiary that is prohibited or restricted by applicable Law or by a binding Contractual Obligation from providing a Guaranty (provided that such Contractual Obligation is permitted hereunder and is in existence on the Closing Date or at the time such Subsidiary is acquired and is not entered into by the Borrower or any Subsidiary for the purpose of qualifying as an “Excluded Subsidiary” under this Agreement) or if such Guaranty would require governmental (including regulatory) or third party (other than a Loan Party or an Affiliate of a Loan Party) consent, approval, license or authorization, (f) any Subsidiary that is a special purpose vehicle, (g) any Subsidiary that is a not-for-profit organization, (h) any Subsidiary that is a captive insurance company and (i) any other Subsidiary with respect to which, in the reasonable judgment of the

Administrative Agent (confirmed in writing by notice to the Borrower), the cost or other consequences (including any adverse tax consequences) of providing the Guaranty are excessive in view of the benefits to be obtained by the Secured Parties therefrom; *provided*, that, it is understood and agreed that, notwithstanding the above, if a Subsidiary executes the Guaranty as a “Guarantor” then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Guaranty as a “Guarantor” in accordance with the terms hereof). Notwithstanding anything herein to the contrary, if any Guarantor becomes a non-Wholly Owned Subsidiary, such Guarantor shall only be permitted to be released from its Guaranty so long as: (x) such Subsidiary becomes a non-Wholly Owned Subsidiary pursuant to a transaction in which the other Person obtaining an Equity Interest in such Subsidiary is not an Affiliate of the Borrower (other than as a result of the obtaining of such Equity Interest), (y) such transaction is for a bona fide business purpose and not for the primary purpose of avoiding the Guaranty and (z) upon giving effect to the transaction in which such Subsidiary becomes a non-Wholly Owned Subsidiary, the Investment of the Loan Parties in such Subsidiary are permitted pursuant to Section 7.03(b)(ii) as if such Investments were being made *de novo* as at that time; provided that no such release shall occur if (and while) such Subsidiary continues to be a guarantor in respect of any Junior Financing of any Loan Party or any Subsidiary.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell”, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Sections 3.01(b) or (d), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(f) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain First Lien Credit and Guaranty Agreement (as amended, restated, supplemented or modified from time to time) dated as of August 28, 2017, among the Borrower, the other Credit Parties party thereto (as defined therein), the Lenders party thereto (as defined therein) and Macquarie Capital Funding LLC, as administrative agent and collateral agent.

“Facility” means the Term Facility, the Revolving Facility or any Incremental Term Facility, as the context may require.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification and expense reimbursement obligations), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto reasonably satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Flood Hazard Property” means any Mortgaged Property that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Flood Insurance Laws” means, collectively, (a) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert–Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Acquisition” means any Acquisition by any Loan Party (a) of the Equity Interests of any Person not organized under the laws of the United States, any state thereof or the District of Columbia (other than a Person who (i) is a Guarantor or (ii) is a Designated Foreign Subsidiary Guarantor and executes a Joinder Agreement (or such other documentation as may be reasonably requested by the Administrative Agent for such Foreign Subsidiary to become a Guarantor) substantially contemporaneously with the closing of such Acquisition and thereafter complies with the terms of Sections 6.12 and 6.13 within the timeframes specified therein; provided that, with respect to any Designated Foreign Subsidiary Guarantor, the Administrative Agent shall have made the determinations described in clause (ii) of the definition of “Designated Foreign Subsidiary Guarantor” and in clause (b) of the definition of “Approved Jurisdiction” permitting such Foreign Subsidiary to become a Designated Foreign Subsidiary Guarantor) or (b) in respect of assets that will not be held by a Loan Party after giving effect to such Acquisition.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

“FSHCO” means any Subsidiary substantially all of the assets of which constitute the Equity Interests of CFCs or other FSHCOs.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funding Indemnity Letter” means a funding indemnity letter, in form and substance satisfactory to the Administrative Agent.

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to (x) in the case of a Guarantee described in the foregoing

clause (a), the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith, and (y) in the case of a Guarantee described in the foregoing clause (b), the lesser of (1) the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith and (2) the fair market value (as determined by the Borrower in good faith) of the assets encumbered thereby. Notwithstanding anything to the contrary, the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 10.01.

“Guarantors” means, collectively, (a) the Subsidiaries of the Borrower as are or may from time to time become parties to this Agreement pursuant to Section 6.12, and (b) with respect to Additional Secured Obligations owing by any Loan Party or any of its Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, the Borrower.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law based on its dangerous or deleterious properties.

“Hedge Bank” means any Person in its capacity as a party to a Swap Contract that, (a) at the time it enters into a Swap Contract not prohibited under Articles VI or VII, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited under Articles VI or VII, in each case, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); *provided*, in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement and *provided further* that for any of the foregoing to be included as a “Secured Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“Immaterial Subsidiary” means, as of any date, any Subsidiary designated as such by the Borrower in writing to the Administrative Agent that, together with its Subsidiaries: (a) as of the last day of the Measurement Period most recently ended for which financial statements have been delivered pursuant to Section 6.01(a) or (b), did not have, together with the total assets as of such date of all other Immaterial Subsidiaries (together with their respective Subsidiaries) in the aggregate, total assets in excess of five percent (5%) of Consolidated Total Assets or (b) for the Measurement Period most recently ended for which financial statements have been delivered pursuant to Section 6.01(a) or (b), did not have, together with the Consolidated EBITDA for such Measurement Period attributable to all Immaterial Subsidiaries (together with their respective Subsidiaries) in the aggregate, Consolidated EBITDA attributable to such Subsidiary in excess of five percent (5%) of Consolidated EBITDA for such Measurement Period.

“Incremental Facility” has the meaning specified in Section 2.02(g).

~~“Incremental Revolving Facility” has the meaning specified in Section 2.02(g)(i).~~

“*Incremental Term Borrowing*” means, with respect to any Incremental Term Facility, a borrowing under such Incremental Term Facility consisting of simultaneous Incremental Term Loans of the same Type and, in the case of Eurodollar BSBY Rate Loans, having the same Interest Period made by the Incremental Term Lenders under such Incremental Term Facility pursuant to Section 2.01(b).

“*Incremental Term Commitment*” means, as to any Incremental Term Facility, as to each Incremental Term Lender under such Incremental Term Facility, its obligation to make an Incremental Term Loan under such Incremental Term Facility.

“*Incremental Term Facility*” has the meaning specified in Section 2.02(g).

“*Incremental Term Facility Agreement*” has the meaning specified in Section 2.02(g)(ii)(D).

“*Incremental Term Facility Maturity Date*” means, with respect to any Incremental Term Facility, the maturity date of such Incremental Term Facility set forth in the Incremental Term Facility Agreement executed and delivered pursuant to Section 2.02(g)(ii) in connection with such Incremental Term Facility.

“*Incremental Term Lender*” means, with respect to any Incremental Term Facility at any time, any Person that holds an Incremental Term Loan under such Incremental Term Facility at such time.

“*Incremental Term Loan*” means, with respect to any Incremental Term Facility, an advance made by an Incremental Term Lender under such Incremental Term Facility.

“*Incremental Term Note*” means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit D.

“*Indebtedness*” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby), bankers' acceptances, bank guaranties and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and other accounts payable in the ordinary course of business and not past due for more than sixty (60) days after the date on which such trade account was created and (ii) deferred compensation accruals for payroll and accrued expenses in the ordinary course of business), including any Earn Out Obligations (with the amount of any Earn Out Obligations incurred in connection with any transaction being deemed to be the amount stated as a liability on the balance sheet of such Person in accordance with GAAP);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

- (f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment prior to the date that is one hundred eighty-one (181) days after the Latest Maturity Date then in effect in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

; *provided*, however, that notwithstanding anything to the contrary, (x) amounts owing under any Permitted Convertible Indebtedness shall not be considered Indebtedness to the extent cash collateralized on terms at the time of such pledge, to the extent material to the interests of the Lenders, reasonably satisfactory to the Administrative Agent (it being understood that such pledge shall be in part for the benefit of the Lenders and shall not be released prior to payment in full of all amounts owing under the applicable Permitted Convertible Indebtedness without the consent of the Required Lenders other than to pay amounts owing under such Permitted Convertible Indebtedness to the extent such payments are permitted under this Agreement and any applicable subordination terms), and (y) obligations arising under notes or similar instruments issued in connection with customary commercial arrangements in China shall not be considered Indebtedness to the extent considered accounts payable of such Person in accordance with GAAP.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company or other limited liability legal entity) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value (as determined by the Borrower in good faith) of the property encumbered thereby.

“*Indemnified Taxes*” means all (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“*Indemnitee*” has the meaning specified in Section 11.04(b).

“*Information*” has the meaning specified in Section 11.07(a).

“*Intellectual Property*” has the meaning set forth in the Security Agreement.

“*Interest Payment Date*” means, (a) as to any EurodollarBSBY Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided, however*, that if any Interest Period for a EurodollarBSBY Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swingline Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swingline Loans being deemed made under the Revolving Facility for purposes of this definition).

“Interest Period” means, as to each Eurodollar BSBY Rate Loan, the period commencing on the date such Eurodollar BSBY Rate Loan is disbursed or converted to or continued as a Eurodollar BSBY Rate Loan and ending on the date one (1), three (3) or six (6) months thereafter (in each case, subject to availability), as selected by the Borrower in its Loan Notice; *provided that*:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a BSBY Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period pertaining to a BSBY Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the original cost of such Investment (without adjustment for subsequent increases or decreases in the value of such Investment), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Subsidiary in respect of such Investment.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“ISP” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.13.

“Junior Financing” has the meaning set forth in Section 7.13.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement,



interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

“L/C Commitment” means, with respect to the L/C Issuer, the commitment of the L/C Issuer to issue Letters of Credit hereunder. The initial amount of the L/C Issuer’s Letter of Credit Commitment is set forth on Schedule 2.03. The Letter of Credit Commitment of the L/C Issuer may be modified from time to time by agreement between the L/C Issuer and the Borrower, and notified to the Administrative Agent.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (including all L/C Borrowings). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Latest Maturity Date” means, as of any date of determination, the latest of the Maturity Date with respect to the Revolving Facility, the Maturity Date with respect to the Term Facility and the then-latest Incremental Term Facility Maturity Date.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement (including each Incremental Term Lender) and, their successors and assigns and, unless the context requires otherwise, includes the Swingline Lender.

“Lending Office” means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrower and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Fee” has the meaning specified in Section 2.03(1).

“Letter of Credit Sublimit” means, as of any date of determination, an amount equal to the lesser of (a) \$15,000,000 and (b) the Revolving Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“Leverage Increase Period” has the meaning specified in Section 7.11(b).

~~“LIBOR” has the meaning specified in the definition of Eurodollar Rate.~~

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Acquisition” means any contractually committed Acquisition the consummation of which by the Borrower or any Subsidiary is not conditioned on the availability of, or on obtaining, third party financing.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Loan, an Incremental Term Loan or a Swingline Loan.

“Loan Documents” means, collectively, this Agreement, the Notes, the Guaranty, the Collateral Documents, the Engagement Letter, each Issuer Document, each Incremental Term Facility Amendment, each Joinder Agreement, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14, any subordination agreement entered into by the Administrative Agent and a Loan Party in respect of Permitted Subordinated Debt and all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement) and any amendments, modifications or supplements thereto or to any other Loan Document or waivers hereof or to any other Loan Document; *provided, however*, that for purposes of Section 11.01, “Loan Documents” shall mean this Agreement, the Guaranty and the Collateral Documents.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar BSBY Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties or financial condition of the Borrower and its Subsidiaries taken as a whole; or (b) a material adverse effect on (i) the ability of the Loan Parties, taken as a whole, to perform their Obligations, (ii) the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document to which it is a party or (iii) the rights, remedies and benefits available to, or

conferred upon, the Administrative Agent or any Lender under the Loan Documents, taken as a whole (other than to the extent a result of the action or inaction of the Administrative Agent or any Lender).

“Material Subsidiary” means each Subsidiary that is not an Immaterial Subsidiary.

“Material Wholly Owned Domestic Subsidiary” means each Material Wholly Owned Subsidiary that is a Domestic Subsidiary.

“Material Wholly Owned Foreign Subsidiary” means each Material Wholly Owned Subsidiary that is a Foreign Subsidiary.

“Material Wholly Owned Subsidiary” means each Wholly Owned Subsidiary that is a Material Subsidiary.

“Maturity Date” means (a) with respect to the Revolving Facility, September 3, 2026, (b) with respect to the Term Facility, September 3, 2026 and (c) with respect to the Incremental Term Facility, the applicable Incremental Term Facility Maturity Date; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or Section 6.01(b) (or if prior to the date of delivery of the first financial statements pursuant to Section 6.01(a) or Section 6.01(b), the most recently ended fiscal quarter of the Borrower for which financial statements are available).

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody's” means Moody's Investors Service, Inc. and any successor thereto.

“Mortgage” or “Mortgages” means, individually and collectively, as the context requires, each of the fee or leasehold mortgages, deeds of trust, deeds and other similar security documents executed by a Loan Party that purport to grant a Lien to the Administrative Agent (or a trustee for the benefit of the Administrative Agent) for the benefit of the Secured Parties in any Mortgaged Properties, in form and substance satisfactory to the Administrative Agent.

“Mortgaged Property” means any real property (other than any Excluded Property) of a Loan Party owned in fee simple by any Loan Party that is or is required to be encumbered by a Mortgage in accordance with the terms of this Agreement.

“Mortgaged Property Support Documents” means, with respect to any real property subject to a Mortgage, the deliveries and documents described on Schedule 1.01(c).

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means (i) in connection with any Disposition or Involuntary Disposition, the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect thereof, net of (a) customary costs and expenses incurred in connection therewith (including, without limitation, legal, brokerage, advisor, accounting and investment banking fees and sales commissions and other professional fees and disbursements, survey costs, title insurance premiums and related search and recording charges), (b) taxes paid or payable (or estimated in good faith by the Borrower to become payable) as a result thereof or in connection with the repatriation of any cash payments received (or subsequently received) by any Foreign Subsidiary in connection therewith, (c) in the case of any Disposition or any Involuntary Disposition, the amount necessary to retire any Indebtedness, including any premium or penalty thereon, secured by a Permitted Lien (ranking senior to any Lien of the Administrative Agent) on the related property, (d) a reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (b) above) (x) related to any of the applicable assets and (y) retained by the Borrower or applicable Subsidiary, including, without limitation, pension and other post-employment benefit liabilities related to environmental matters or for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Disposition or Involuntary Disposition undertaken by the Borrower or any of the Subsidiaries in connection with such Disposition or Involuntary Disposition; provided, upon release of any such reserve, the amount released shall be considered Net Cash Proceeds, (e) in the case of any Disposition or Involuntary Disposition by a non-Wholly Owned Subsidiary, the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (e)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Wholly Owned Subsidiary as a result thereof, and (f) in the case of any Involuntary Disposition, amounts required to be turned over to landlords (or their mortgagees) pursuant to the terms of any lease to which the Borrower or any of its Subsidiaries is party; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition or Involuntary Disposition, and (ii) in connection with any Debt Issuance, the cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary therefrom, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions, other customary fees and expenses actually incurred in connection therewith, and, in the case of any Indebtedness that constitutes Permitted Convertible Indebtedness, the net cost of any Permitted Call Spread Transaction executed substantially concurrently with the pricing of such Permitted Convertible Indebtedness.

“New Revolving Lender” has the meaning specified in Section 2.19(c).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b).

“Not Otherwise Applied” means, with reference to any amount of any capital contribution to the Borrower, any amount of proceeds from issuances of Qualified Equity Interests of the Borrower or any Subsidiary or the proceeds from any “key-man” life insurance policy, in each case, that are proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) contingent on the receipt or availability of such amount.

“Note” means a Term Note, a Revolving Note or an Incremental Term Note, as the context may require.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit R or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or Letter of Credit and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in accordance with the terms of Section 11.04 hereof or as provided in any other Loan Document, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; *provided* that, without limiting the foregoing, the Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“OID” has the meaning specified in Section 2.02(g)(ii).

“Organization Documents” means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Loans, Incremental Term Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving

effect to any Borrowings and prepayments or repayments of Term Loans, Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“Patriot Act” has the meaning specified in Section 11.19.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412, 430, 431, and 436 of the Code and Sections 302, 303, and 304 of ERISA.

“Pension Plan” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means an Acquisition (or the acquisition of additional Equity Interests of a non-Wholly Owned Subsidiary) by any Loan Party or any Subsidiary (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the “Target”) of a Target, in each case that is a type of business (or assets used in a type of business) in which the Borrower and its Subsidiaries are not prohibited from engaging pursuant to Section 7.07 (including the formation and funding of Subsidiaries in connection therewith) in each case provided that:

- (a) (i) in the case of a Limited Condition Acquisition, (1) no Default shall exist as of the date the definitive acquisition agreement for such Limited Condition Acquisition is entered into and (2) immediately prior to, and after giving effect to such Limited Condition Acquisition, no Specified Event of Default shall have occurred and be continuing or would result therefrom and (ii) in the case of any other Acquisition, no Default shall then exist or would exist immediately after giving effect thereto;
- (b) subject to Section 1.02(f), upon giving effect to such Acquisition on a Pro Forma Basis, the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the then most recent Measurement Period;
- (c) such Acquisition shall not be a “hostile” Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target; and
- (d) the aggregate Cost of Acquisition paid by the Loan Parties for all Foreign Acquisitions consummated during any fiscal year shall not exceed \$25,000,000 (with fifty percent (50%) of the unused amounts in any fiscal year being carried over to the immediately succeeding fiscal year (but to no further succeeding fiscal year after the immediately succeeding fiscal year); *provided* that the Cost of Acquisition with respect to Acquisitions consummated in any fiscal year

shall be applied first to the aggregate amount permitted for such fiscal year, until utilized in full, and then to any amount carried over from the prior fiscal year).

“Permitted Bond Hedge Transaction” means any bond hedge, capped call or similar option transaction purchased by Borrower and entered into in connection with the issuance of Permitted Convertible Indebtedness for the purpose or having the effect of increasing the effective conversion price of such Permitted Convertible Indebtedness and referencing the same Qualified Equity Interests of the Borrower into which the Permitted Convertible Indebtedness converts; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by Borrower from the issuance of such Permitted Convertible Indebtedness in connection with such Permitted Bond Hedge Transaction.

“Permitted Call Spread Transaction” means any Permitted Bond Hedge Transaction together with, if applicable, any Permitted Warrant Transaction.

“Permitted Convertible Indebtedness” means any unsecured Convertible Indebtedness of the Borrower constituting Permitted Subordinated Debt.

“Permitted Equity Investors” means EagleTree Capital, LP and its Controlled Investment Affiliates.

“Permitted Liens” has the meaning set forth in Section 7.01.

“Permitted Refinancing” means, with respect to any Indebtedness of any Person, any modification, refinancing, refunding, replacement, renewal or extension of such Indebtedness; *provided, that*, (a) the principal amount thereof does not exceed the sum of (i) the outstanding principal amount of the Indebtedness so modified, refinanced, refunded, replaced, renewed or extended plus (ii) prepayment premiums paid, and reasonable and customary fees and expenses incurred, in connection with such modification, refinancing, refunding, replacement, renewal or extension, (b) such modification, refinancing, refunding, replacement, renewal or extension has (i) a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended, and (ii) subject to clause (d) of the definition of Permitted Subordinated Debt, a Weighted Average Life to Maturity equal to or longer than the Weighted Average Life to Maturity of the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended, (c) the direct and contingent obligors of such Indebtedness shall not be changed, as a result of or in connection with such modification, refinancing, refunding, replacement, renewal or extension, (d) the terms (excluding pricing, fees, rate floors, discounts, premiums and optional prepayment or redemption terms) of such Indebtedness shall not be changed in any manner that (as determined by the Borrower in good faith) is materially adverse, taken as a whole, to the Borrower and its Subsidiaries as a result of or in connection with such modification, refinancing, refunding, replacement, renewal or extension, (e) if the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended is a Junior Financing, such modification, refinancing, refunding, replacement, renewal or extension is subordinated to the Secured Obligations on terms at least as favorable to the Lenders (as determined by the Borrower in good faith in consultation with the Administrative Agent) as those contained in the documentation governing the Junior Financing being so modified, refinanced, refunded, renewed or extended, (f) if the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended is unsecured, such modification, refinancing, refunding, replacement, renewal or extension shall be unsecured (*provided, that*, the limitation contained in this clause (f) shall not be applicable to the extent that any Liens that would otherwise be prohibited by this clause (f) are permitted pursuant to any other subclause of Section 7.01), and (g) (i) in the case of any such modification, refinancing, refunding, replacement, renewal or extension entered into in connection with a Limited Condition Acquisition, (1) no Event of Default shall have occurred and be continuing as of the date

the definitive acquisition agreement for such Limited Condition Acquisition is entered into and (2) no Specified Event of Default shall have occurred and be continuing at the time of such modification, refinancing, refunding, replacement, renewal or extension and (ii) in the case of any modification, refinancing, refunding, replacement, renewal or extension not in connection with a Limited Condition Acquisition, no Default shall have occurred and be continuing at the time of such modification, refinancing, refunding, replacement, renewal or extension.

“Permitted Sale and Leaseback Transaction” means any Sale and Leaseback Transaction consummated by a Loan Party with respect to any fee owned real property of such Loan Party; *provided, that*, (a) the real property sold shall be sold for fair market value (as determined by the Borrower in good faith) to a Person that is not an Affiliate of the Borrower or any Subsidiary, (b) the Borrower shall have delivered a certificate of a Responsible Officer of the Borrower certifying that: (i) after giving effect to such Sale and Leaseback Transaction on a Pro Forma Basis, the Loan Parties would be in compliance with the covenants set forth in [Section 7.11](#) as of the most recent Measurement Period and (ii) no Event of Default shall have occurred and be continuing or would arise upon consummation of such transaction as a result thereof and (c) the Net Cash Proceeds received from the sale of such property shall have been applied in accordance with, and to the extent required by, [Section 2.05\(b\)\(i\)](#).

“Permitted Subordinated Debt” means unsecured Indebtedness (which may include, for the avoidance of doubt, Convertible Indebtedness) of the Borrower (and any Permitted Refinancing thereof) in an aggregate principal amount at any one time outstanding not to exceed \$200,000,000; *provided, that*, (a) such Indebtedness (and any Permitted Refinancing thereof) is subordinated to the Secured Obligations on terms and pursuant to documentation reasonably satisfactory to the Administrative Agent, (b) no Default exists at the time of, or will exist immediately after giving effect to, the incurrence of such Indebtedness (or such Permitted Refinancing, as the case may be), (c) no Subsidiary shall Guarantee any such Indebtedness if such Subsidiary is not a Guarantor, (d) such Indebtedness (and any Permitted Refinancing thereof) shall not mature, and no scheduled or mandatory principal payments, prepayments, cash settlements, repurchases, redemptions or sinking fund or like payments of such Indebtedness (except those that are customarily included with respect to Indebtedness of such nature), shall be required at any time on or prior to the date that is ninety-one (91) days after the Latest Maturity Date, (e) such Indebtedness (or any Permitted Refinancing thereof) shall not include terms and conditions (excluding pricing, premiums and optional prepayment or optional redemption provisions) that are, when taken as a whole, in the good faith judgment of the Borrower, materially more restrictive on the Borrower and its Subsidiaries than the terms and conditions of this Agreement (it being understood that the inclusion of a customary delisting prong of the fundamental change definition in any Permitted Convertible Indebtedness shall not be deemed to be materially more restrictive) unless the Loan Parties shall have entered into an amendment to this Agreement with the Administrative Agent (which, notwithstanding anything to the contrary set forth herein, shall not require the consent of any other Lender) to add such more restrictive terms to this Agreement and (f) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower (in form and substance reasonably satisfactory to the Administrative Agent) certifying as to the satisfaction of the foregoing.

“Permitted Supply Chain Financing” has the meaning specified in [Section 7.02\(s\)](#).

“Permitted Transfer” means (a) any Disposition by the Borrower or any Subsidiary; *provided, that*, (i) at the time of such Disposition, no Event of Default shall exist or would result from such Disposition, (ii) such Disposition shall be for fair market value (as determined by the Borrower in good faith), (iii) the aggregate amount of all Permitted Transfers made in any fiscal year shall not exceed \$15,000,000 (with fifty percent (50%) of the unused amounts in any fiscal year being carried over to the immediately succeeding fiscal year (but to no further succeeding fiscal year after the immediately succeeding fiscal year); *provided that* the aggregate amount of Permitted Transfers in any fiscal year shall be applied first to the aggregate amount for such fiscal year, until utilized in full, and then to any amount carried over from



the prior fiscal year) and (iv) the purchase price with respect thereto shall be paid to the Borrower or such Subsidiary, as applicable, for not less than seventy-five percent (75%) cash and Cash Equivalent consideration; *provided, however*, that for the purposes of this clause (iv), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder) of the Borrower or such Subsidiary (other than liabilities that are by their terms subordinated to the Secured Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and its Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations received by the Borrower or such Subsidiary from such transferee that are converted by the Borrower or such Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in the conversion) within one hundred eighty (180) days following the closing of the applicable Disposition; and (C) any Designated Non-Cash Consideration in respect of such Disposition having an aggregate fair market value (as determined in good faith by the Borrower), taken together with the Designated Non-Cash Consideration in respect of all other Dispositions, not in excess of \$5,000,000 (with the fair market value of each item of Designated Non-Cash Consideration being measured as of the time received (and without giving effect to subsequent changes in value)), (b) Dispositions of non-core assets acquired in connection with Permitted Acquisitions or similar Investments so long as (i) the aggregate fair market value (as determined in good faith by the Borrower) of the asset(s) subject to such Disposition (or series of related Dispositions) shall not exceed ten percent (10%) of the purchase price of the applicable acquired entity, assets or business, (ii) each such Disposition is an arm's-length transaction, and (iii) the Net Cash Proceeds received by the Borrower or the applicable Subsidiary in connection with any such Disposition (or series of related Dispositions) shall be in an amount at least equal to the fair market value of the asset(s) subject to such Disposition (as determined in good faith by the Borrower), (c) Permitted Sale and Leaseback Transactions and (d) other Dispositions, so long as the Net Cash Proceeds received by the Borrower and its Subsidiaries in connection therewith, when aggregated with the Net Cash Proceeds of all other Dispositions made by the Borrower or any Subsidiary in reliance on this clause (d), in any fiscal year do not exceed \$5,000,000.

"Permitted Warrant Transaction" means any warrant issued by the Borrower concurrently with the purchase, by the Borrower, of a Permitted Bond Hedge Transaction for the purpose of offsetting the cost of such Permitted Bond Hedge Transaction and referencing the same Qualified Equity Interest into which the Permitted Convertible Indebtedness converts.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 6.02(p).

"Pledged Equity" has the meaning specified in the Security Agreement.

"Pro Forma Basis" and "Pro Forma Effect" means, for any Specified Transaction, whether actual or proposed, for purposes of determining compliance with the financial covenants set forth in Section 7.11 or any other applicable test or requirement, each such Specified Transaction or proposed Specified Transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

- (a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such

Disposition shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

- (b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;
- (c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period; and
- (d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;

; provided, that, (A) Pro Forma Basis and Pro Forma Effect in respect of any Specified Transaction shall be calculated in a reasonable and factually supportable manner and certified by a Responsible Officer of the Borrower, it being understood that the Borrower may estimate in good faith GAAP results if the financial statements with respect to a Target are not maintained in accordance with GAAP, and the Borrower may make such further adjustments in good faith as reasonably necessary in connection with the consolidation of such financial statements with those of the Loan Parties and their Subsidiaries, and (B) any such calculation shall be subject to the applicable limitations set forth in (and shall be without duplication of any adjustments made pursuant to) the definition of “Consolidated EBITDA”.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02(p).

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 11.21.

~~“Other Rate Early Opt-in” means the Administrative Agent and the Borrower have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt-in Election and (b) Section 3.03(c)(ii) and paragraph (2) of the definition of “Benchmark Replacement”.~~

“Qualified Acquisition” means any acquisition (or series of related acquisitions consummated in any six (6)-month period) for which (a) the aggregate consideration therefor (excluding the amount of any consideration in the form of Qualified Equity Interests of the Borrower) is in excess of \$100,000,000, and (b) a Responsible Officer of the Borrower shall have delivered to the Administrative Agent a certificate (i) certifying that such acquisition (or such series of related acquisitions) meet the criteria set forth in Section 7.11(b), and (ii) notifying the Administrative Agent that the Borrower has elected to treat such acquisition (or such series of related acquisitions) as a Qualified Acquisition.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity

Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Equity Interest” of any Person means any Equity Interest of such Person that is not a Disqualified Equity Interest.

“Recipient” means the Administrative Agent, any Lender or the L/C Issuer.

“Refinance Convertible Notes” means a different series of Permitted Convertible Indebtedness issues as part of a Permitted Refinancing of Permitted Convertible Indebtedness (it being understood that, following the closing of any Refinance Convertible Notes, such notes shall be treated as and subject to the terms hereof with respect to Permitted Convertible Indebtedness).

“Register” has the meaning specified in Section 11.06(c).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans, Incremental Term Loans or Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

“Required Lenders” means, (a) at any time there is one (1) Lender, such Lender, and (b) at any time there is more than one (1) Lender, at least two (2) Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided that, in the case of this clause (ii), the Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders; *provided* that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or the L/C Issuer, as the case may be, in making such determination.

“Resignation Effective Date” has the meaning set forth in Section 9.06(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, controller, vice president of finance, or other similar officer or Person performing similar functions of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section

4.01(b), the general counsel, secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (d) any payment made in cash under a Permitted Warrant Transaction as a result of the election of “cash settlement” (or substantially equivalent term) as the “settlement method” (or substantially equivalent term) thereunder by Borrower or any Subsidiary (including in connection with the exercise and/or early unwind or settlement thereof), and (e) any payment made in cash to the holders of Convertible Bond Indebtedness (excluding any required payment of interest and any payment of cash in lieu of a fractional share due upon conversion thereof) unless, and to the extent that, a corresponding amount is received in cash (whether through a direct cash payment or a settlement in shares of Equity Interests that are immediately sold for cash) substantially contemporaneously with such cash payment, from (i) the substantially concurrent issuance of shares of Qualified Equity Interests of the Borrower, (ii) the issuance of Refinance Convertible Notes, and (iii) the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, entered into in connection with such Convertible Bond Indebtedness.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of ~~Eurodollar~~ BSBY Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(b).

“Revolving Commitment” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Commitment of all of the Revolving Lenders on the Closing Date shall be \$100,000,000.

“Revolving Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Facility” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“Revolving Lender” means, at any time, (a) so long as any Revolving Commitment is in effect, any Lender that has a Revolving Commitment at such time or (b) if the Revolving Commitments have terminated or expired, any Lender that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“Revolving Loan” has the meaning specified in Section 2.01(b).

“Revolving Note” means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans or Swingline Loans, as the case may be, made by such Revolving Lender, substantially in the form of Exhibit G.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement between any Loan Party and/or its Subsidiaries and any Cash Management Bank.

“Secured Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract required by or not prohibited under Article VI or VII between any Loan Party and/or its Subsidiaries and any Hedge Bank.

“Secured Obligations” means all Obligations and all Additional Secured Obligations.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit H.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties.

“Shareholders’ Equity” means, as of any date of determination, consolidated shareholders’ equity of the Borrower and its Subsidiaries as of such date, determined in accordance with GAAP.

~~“SOFR Early Opt-in” means the Administrative Agent and the Borrower have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of “Benchmark Replacement”.~~

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.26161% (26.161 basis points); and with respect to Term SOFR means 0.11448% (11.448 basis points) for an interest period of one-month’s duration, 0.26161% (26.161 basis points;) for an interest period of three-month’s duration, 0.42826% (42.826 basis points) for an interest period of six-months’ duration, and 0.71513% (71.513 basis points) for an interest period of twelve-months’ duration.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Acquisition” means the acquisition titled “Project Domino” notified to the Administrative Agent prior to the Closing Date (including the formation and funding of Subsidiaries in effectuation thereof).

“Specified Event of Default” means any Event of Default pursuant to Section 8.01(a), Section 8.01(f), or Section 8.01(g).

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Specified Transaction” means (a) any Acquisition, any sale, transfer or other disposition of all or substantially all of a line of business or that results in a Person ceasing to be a Subsidiary and any Investment that results in a Person becoming a Subsidiary, (b) any incurrence or repayment of Indebtedness, or (c) any other event or transaction that by the terms of the Loan Documents requires compliance with a test or covenant on a Pro Forma Basis or calculation as to Pro Forma Effect with respect to a test or covenant.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Supported OFC” has the meaning specified in Section 11.21.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or

forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and any unpaid amounts thereunder, and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Commitment” means, as to any Lender (a) the amount set forth opposite such Lender’s name on Schedule 2.01 hereof or (b) if such Lender has entered into an Assignment and Assumption or has otherwise assumed a Swingline Commitment after the Closing Date, the amount set forth for such Lender as its Swingline Commitment in the Register maintained by the Administrative Agent pursuant to Section 11.06(c).

“Swingline Lender” means Bank of America in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit J or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Swingline Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Target” has the meaning set forth in the definition of “Permitted Acquisition.”

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of ~~EurodoHar~~ BSBY Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 1.01(b) under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Term Commitment of all of the Term Lenders on the Closing Date shall be \$250,000,000.

“Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

“Term Note” means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit K.

“Term SOFR” means, for the applicable corresponding ~~tenor~~ Interest Period of BSBY (or if any ~~Available Tenor of a Benchmark Interest Period~~ Interest Period does not correspond to an ~~Available Tenor for the interest period~~ applicable Benchmark Replacement to SOFR, the closest corresponding ~~Available Tenor interest period of SOFR~~, and if such ~~Available Tenor interest period of SOFR~~ corresponds equally to two ~~Available Tenors of the applicable Benchmark Replacement Interest Periods of BSBY~~, the corresponding ~~tenor interest period~~ of the shorter duration shall be applied); the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Threshold Amount” means \$25,000,000.

“Total Credit Exposure” means, as to any Lender at any time, without duplication, the unused Commitments, Revolving Exposure, Outstanding Amount of all Term Loans and Outstanding Amount of all Incremental Term Loans of such Lender at such time.

“Total Revolving Exposure” means, as to any Revolving Lender at any time, the unused Commitments and Revolving Exposure of such Revolving Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations.

“Trade Date” has the meaning specified in Section 11.06(g)(i).



“Type” means, with respect to a Loan, its character as a Base Rate Loan or a ~~Eurodollar~~BSBY Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(f).

“Unrestricted Cash” means the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties maintained in domestic accounts, not to exceed (other than, solely for purposes of calculating the Consolidated Total Net Leverage Ratio solely for purposes of determining the Applicable Rate for a period not to exceed twelve (12) months from the incurrence thereof, any such cash representing Net Cash Proceeds from the incurrence of Permitted Convertible Indebtedness to the extent such Permitted Convertible Indebtedness remains outstanding) \$75,000,000 in the aggregate; provided that cash or Cash Equivalents representing the proceeds of Indebtedness (i) incurred for the sole purpose to finance the consideration (and the payment of fees and expenses in connection therewith) for a not yet consummated Permitted Acquisition that are segregated or held in escrow pending the consummation of such Permitted Acquisition within five (5) Business Days of such incurrence (as determined in good faith by the Borrower) or (y) incurred for the sole purpose of refinancing Indebtedness permitted hereunder (and the payment of fees and expenses in connection therewith) that are segregated or held in escrow pending such refinancing within five (5) Business Days of such incurrence (as determined in good faith by the Borrower), in each case, shall not be disqualified from being considered Unrestricted Cash solely due to Liens or restrictions arising from such escrow arrangement or restricted usage.

“U.S. Loan Party” means any Loan Party that is organized under the laws of the United States, any state or commonwealth thereof or the District of Columbia.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.21.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(f)(ii)(B)(3).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to so vote has been suspended by the happening of such contingency.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date of determination, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one twelfth) that will elapse between such date of determination and the making of such payment by (b) the then outstanding principal amount of such Indebtedness as of such date of determination.

“Wholly Owned Subsidiary” means, as to any Person, (a) any corporation one hundred percent (100%) of whose Equity Interests is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a one hundred percent (100%) equity interest at such time, in each case, other than directors’ qualifying shares or Equity Interests that are required to be held by another person in order to satisfy a foreign requirement of Law prescribing an equity owner resident in the local jurisdiction. Unless otherwise specified, all references herein to a “Wholly Owned Subsidiary” or to “Wholly Owned Subsidiaries” shall refer to a Wholly Owned Subsidiary or Wholly Owned Subsidiaries of the Borrower.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## **1.02 Other Interpretive Provisions.**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s

successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

- (b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).
- (e) For purposes of determining compliance at any time with Section 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.08, or 7.13, if any Lien, Indebtedness, Investment, fundamental change, Disposition, Restricted Payment, affiliate transaction, or prepayment, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Section 7.01 (other than Section 7.01(a)), 7.02 (other than Section 7.02(a)), 7.03, 7.04, 7.05, 7.06, 7.08, or 7.13, respectively, the Borrower, in its sole discretion, may upon the incurrence or occurrence, as applicable, of such Lien, Indebtedness, Investment, fundamental change, Disposition, Restricted Payment, affiliate transaction, or prepayment, classify and divide any such transaction or item (or portion thereof) and will be entitled to include the amount and type of any such transaction or item (or portion thereof) in any one or more of the above categories as it so elects at such time, and such transaction or item (or portion thereof) will be treated for all purposes hereunder after such occurrence or incurrence, as applicable, as being incurred or existing pursuant to only such category or categories.
- (f) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, if any Indebtedness (other than with respect to the incurrence of Revolving Loans, Swingline Loans or any L/C Credit Extension) is incurred, acquired, or assumed in connection with a Limited Condition Acquisition, then compliance with any applicable ratio, test or other basket hereunder on a Pro Forma Basis may be determined, at the option of the Borrower, either (x) as of the time of entry into the applicable acquisition agreement or (y) at the time of incurrence, acquisition or assumption, as applicable, of such Indebtedness; *provided*, if the Borrower elects to have such determination occur at the time of entry into such applicable acquisition agreement, the

Indebtedness to be incurred (and any associated Lien) shall be deemed incurred at the time of such determination and outstanding thereafter for purposes of determining compliance on a Pro Forma Basis with any applicable ratio, test or other basket tested after such time of entry, which ratio, test or other basket shall be calculated both (I) on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (II) on a Pro Forma Basis assuming such Limited Condition Acquisition and the other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated (and Indebtedness not incurred) until such time as either (i) such acquisition agreement is terminated without actually consummating such Limited Condition Acquisition, or (ii) such Limited Condition Acquisition is consummated. For the avoidance of doubt no pro forma adjustments for Limited Condition Acquisitions pursuant to this Section 1.02(f) will apply for purposes of determining compliance with Section 7.11 hereof.

### 1.03

#### **Accounting Terms.**

- (a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470–20 on financial liabilities shall be disregarded and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 “Financial Instruments” (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Borrower or any Subsidiary at “fair value”, as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by the Borrower to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard). In addition, in the case of any Permitted Convertible Indebtedness for which the embedded conversion obligation must be settled by paying solely cash, so long as substantially concurrently with the offering of such Permitted Convertible Indebtedness, the Borrower enters into a cash-settled Permitted Bond Hedge Transaction relating to such Permitted Convertible Indebtedness, notwithstanding any other provision contained herein, for so long as such Permitted Bond Hedge Transaction (or a portion thereof) corresponding to the maximum cash-settled amount owed under such Permitted Convertible Indebtedness remains in effect, all computations of amounts and ratios referred to herein shall be made as if the amount of Indebtedness represented by such Permitted Convertible Indebtedness were equal to the face principal amount thereof without regard to any mark-to-market derivative accounting for such Indebtedness.
- (b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the

Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

- (c) Consolidation of Variable Interest Entities. All references herein to Consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.
- (d) Pro Forma Calculations. Notwithstanding anything to the contrary contained herein, all calculations of Consolidated EBITDA, the Consolidated Total Net Leverage Ratio (including for purposes of determining the Applicable Rate), and the Consolidated Interest Coverage Ratio shall be made on a Pro Forma Basis with respect to all Specified Transactions occurring during the applicable Measurement Period to which such calculation relates, and/or subsequent to the end of such Measurement Period but not later than the date of such calculation; provided, that, notwithstanding the foregoing, when calculating Consolidated EBITDA, the Consolidated Total Net Leverage Ratio, and/or the Consolidated Interest Coverage Ratio for purposes of determining (i) compliance with Section 7.11, and/or (ii) the Applicable Rate, any Specified Transaction and any related adjustment contemplated in the definition of “Pro Forma Basis” that occurred subsequent to the end of the applicable Measurement Period shall not be given Pro Forma Effect. For purposes of determining compliance with any provision of this Agreement which requires compliance on a Pro Forma Basis with any financial covenant set forth in Section 7.11, (A) in the case of any such compliance required after delivery of financial statements for the fiscal quarter of the Borrowing ending September 30, 2021, such compliance on a Pro Forma Basis shall be determined by reference to minimum Consolidated EBITDA, the maximum Consolidated Total Net Leverage Ratio, and/or the minimum Consolidated Interest Coverage Ratio, as applicable, permitted for the fiscal quarter most recently then ended for which financial statements have been delivered (or were required to have been delivered) in accordance with Section 6.01(a) or (b), or (B) in the case of any such compliance required prior to the delivery referred to in clause (A) above, such compliance on a Pro Forma Basis shall be determined by reference to minimum Consolidated EBITDA, the maximum Consolidated Total Net Leverage Ratio, and/or the minimum Consolidated Interest Coverage Ratio, as applicable, permitted for the fiscal quarter of the Borrower ending September 30, 2021.
- (e) Cash Netting. Notwithstanding anything in this Agreement or any Loan Document to the contrary if the Borrower or any Subsidiary incurs Indebtedness under a ratio-based basket, such ratio-based basket (together with any other ratio-based basket utilized in connection therewith, including in respect of other Indebtedness, Liens, Dispositions, Investments or Restricted Payments) will be calculated excluding the cash proceeds of such Indebtedness for netting purposes (i.e., such cash proceeds shall not reduce the numerator of the Consolidated Total Net Leverage Ratio pursuant to clause (a)(ii) of the definition of such term).

#### **1.04 Rounding.**

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05** **Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.06** **Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07** **UCC Terms.**

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

**1.08** **Rates.**

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to ~~the rates in the definition of "Eurodollar Rate"~~ any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any ~~of~~ such rate (including ~~any Benchmark Replacement, without limitation, any Successor Rate~~ (or any component of any of the foregoing)) or the effect of any of the foregoing, or of any ~~Benchmark Replacement~~ Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

**ARTICLE II**

**COMMITMENTS AND CREDIT EXTENSIONS**

**2.01** **Loans.**

(a) Term Borrowing. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower, in Dollars, on the Closing Date in an amount not to exceed such Term Lender's Applicable Percentage of the Term Facility. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance

with their respective Applicable Percentage of the Term Facility. Term Borrowings repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or EurodollarBSBY Rate Loans, as further provided herein; *provided, however*, any Term Borrowing made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Term Borrowing.

- (b) **Revolving Borrowings.** Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a “*Revolving Loan*”) to the Borrower, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Commitment; *provided, however*, that after giving effect to any Revolving Borrowing, (i) the Total Revolving Outstandings shall not exceed the Revolving Facility, and (ii) the Revolving Exposure of any Lender shall not exceed such Revolving Lender’s Revolving Commitment. Within the limits of each Revolving Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Loans may be Base Rate Loans or EurodollarBSBY Rate Loans, as further provided herein; *provided, however*, any Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Revolving Borrowing.
- (c) **Incremental Term Loans.** Subject to Section 2.02(g), on the effective date of any Incremental Term Facility Agreement for any Incremental Term Facility, each Incremental Term Lender under such Incremental Term Facility severally agrees to make an Incremental Term Loan to the Borrower in Dollars and in the amount of such Incremental Term Lender’s Incremental Term Commitment for such Incremental Term Facility; provided, that, after giving effect to such Incremental Term Loans, the Outstanding Amount of such Incremental Term Loans under such Incremental Term Facility shall not exceed the aggregate amount of the Incremental Term Commitments for such Incremental Term Facility. Each Incremental Term Borrowing under an Incremental Term Facility shall consist of Incremental Term Loans made simultaneously by the Incremental Term Lenders under such Incremental Term Facility in accordance with their respective Incremental Term Commitments for such Incremental Term Facility. Incremental Term Borrowings prepaid or repaid may not be reborrowed. Incremental Term Loans may be Base Rate Loans or EurodollarBSBY Rate Loans, as further provided herein.

## **2.02 Borrowings, Conversions and Continuations of Loans.**

- (a) **Notice of Borrowing.** Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of EurodollarBSBY Rate Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by: (i) telephone or (ii) a Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of EurodollarBSBY Rate Loans or of any conversion of EurodollarBSBY Rate Loans to Base Rate Loans, and (B) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of EurodollarBSBY Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, in connection with any conversion or continuation of a Term Loan or an Incremental Term Loan, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in

connection with any conversion or continuation of a Term Loan or an Incremental Term Loan, if less, the entire principal thereof then outstanding). Each Loan Notice and each telephonic notice shall specify (I) the applicable Facility and whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (II) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (III) the principal amount of Loans to be borrowed, converted or continued, (IV) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (V) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable EurodollarBSBY Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of EurodollarBSBY Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a EurodollarBSBY Rate Loan.

- (b) Advances. Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date a Loan Notice with respect to a Revolving Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to the Borrower as provided above.
- (c) EurodollarBSBY Rate Loans. Except as otherwise provided herein, a EurodollarBSBY Rate Loan may be continued or converted only on the last day of an Interest Period for such EurodollarBSBY Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as EurodollarBSBY Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding EurodollarBSBY Rate Loans be converted immediately to Base Rate Loans.
- (d) Interest Rates. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.
- (e) Interest Periods. After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to



the other, and all continuations of Revolving Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Revolving Facility. With respect to each Incremental Term Facility, after giving effect to all Incremental Term Borrowings, all conversions of Incremental Term Loans from one Type to the other, and all continuations of Incremental Term Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of such Incremental Term Facility.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

(g) Conforming Changes. With respect to BSBY the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

(gh) Increases in Revolving Facility; Incremental Term Facilities. The Borrower may increase the Revolving Facility (but not the Letter of Credit Sublimit or the Swingline Sublimit) and/or establish one or more new tranches of term loans (each such new tranche of term loans being an “Incremental Term Facility”; each such increase in the Revolving Facility and each Incremental Term Facility, an “Incremental Facility”), by a maximum aggregate amount for all such Incremental Facilities not to exceed \$250,000,000.

(i) Increases in Revolving Facility. The Borrower may at any time after the Closing Date and prior to the Maturity Date with respect to the Revolving Facility, upon prior written notice by the Borrower to the Administrative Agent, increase the Revolving Facility (but not the Letter of Credit Sublimit or the Swingline Sublimit) with additional Revolving Commitments from any Revolving Lender or new Revolving Commitments from one or more other Persons selected by the Borrower and acceptable to the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), the L/C Issuer, and the Swingline Lender (so long as such Persons would be Eligible Assignees); provided, that:

(A) any such increase shall be in a minimum principal amount of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof (or such other amount as the Administrative Agent shall agree in its sole discretion);

(B) no Event of Default shall exist and be continuing at the time of any such increase or would exist immediately after giving effect thereto;

(C) no existing Lender shall be under any obligation to provide a Revolving Commitment in connection with such increase (or to increase its Revolving Commitment, as applicable) and any such decision whether to participate in such increase shall be in such Lender’s sole and absolute discretion;

(D) (1) any new Lender shall join this Agreement by executing such joinder documents as are required by the Administrative Agent, and/or (2) any existing Lender electing to provide a Revolving Commitment in connection with such increase (or to increase its Revolving Commitment, as applicable) shall have executed a commitment agreement satisfactory to the Administrative Agent;

(E) immediately before and after giving effect to such increase, the representations and warranties contained in this Agreement and the other Loan Documents, or which are contained in any certificate, Loan Notice, or Swingline Loan Notice delivered in connection therewith, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purposes of this Section 2.02(g)(i)(E), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively;

(F) the Administrative Agent shall have received (1) a certificate from a Responsible Officer of the Borrower certifying that (x) the conditions set forth in Sections 2.02(g)(i)(B) and (g)(i)(E) have been satisfied, and (y) the condition set forth in Section 2.02(g)(i)(G) has been satisfied (which certification shall include reasonably detailed calculations, including quarterly detail, to demonstrate the satisfaction of such condition), (2) a certificate from a Responsible Officer of each Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (3) if requested by the Administrative Agent, an opinion or opinions of counsel for the Loan Parties, dated as of the date of such increase and addressed to the Administrative Agent and each Lender, in form and substance satisfactory to the Administrative Agent;

(G) upon giving effect to any such increase on a Pro Forma Basis (and assuming for such calculation that such increase is fully drawn), the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recent Measurement Period;

(I) any such increase shall be on the same terms and pursuant to the same documentation applicable to the Revolving Facility; and

(J) in connection with any such increase, the Borrower shall prepay any Revolving Loans outstanding on the date of such increase (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Commitments arising from any non-ratable increase in the Revolving Facility pursuant to this Section 2.02(g)(i).

(ii) Institution of Incremental Term Facilities. The Borrower may at any time after the Closing Date, upon prior written notice to the Administrative Agent, establish an Incremental Term Facility to be provided by one or more Incremental Term Lenders for such Incremental Term Facility; provided, that:

(A) any such Incremental Term Facility shall be in a minimum aggregate principal amount of \$10,000,000 and integral multiples of \$1,000,000 in excess thereof (or such other amount as the Administrative Agent shall agree in its sole discretion);

(B) (i) if the proceeds of such Incremental Term Facility are intended to be applied to consummate a Limited Condition Acquisition, and it is agreed to by the Lenders providing such Incremental Term Facility, (x) no Event of Default shall exist and be continuing at the time that the definitive acquisition agreement is entered into with respect to such Limited Condition Acquisition, and (y) no Specified Event of Default shall exist and be continuing at the time of the establishment of such Incremental Term Facility, immediately prior to, and after giving effect to, such Incremental Term Facility and such Limited Condition Acquisition, and (ii) in all other cases, no Event of Default shall exist and be continuing at the time of the establishment of any such Incremental Term Facility or would exist immediately after giving effect thereto;

(C) no existing Lender shall be under any obligation to become an Incremental Term Lender and any such decision whether to become an Incremental Term Lender shall be in such Lender's sole and absolute discretion;

(D) the Borrower shall obtain Incremental Term Commitments for such Incremental Term Facility from existing Lenders or other Persons reasonably acceptable to the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), which Persons shall join in this Agreement as Incremental Term Lenders by executing an agreement, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the terms applicable to such Incremental Term Facility in accordance with this Section 2.02(g)(ii) (any such agreement, an "Incremental Term Facility Agreement"), it being understood and agreed that in connection with any Incremental Term Facility, the Incremental Term Facility Agreement for such Incremental Term Facility shall only be required to be executed by the Incremental Term Lenders for such Incremental Term Facility, the Loan Parties, and the Administrative Agent (and, for the avoidance of doubt, shall not require the consent of any other Person (including any Lender));

(E) immediately before and after giving effect to the establishment of such Incremental Term Facility, the representations and warranties contained in this Agreement and the other Loan Documents, or which are contained in any certificate, Loan Notice, or Swingline Loan Notice delivered in connection therewith, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of incurrence of such Incremental Term Facility, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purposes of this Section 2.02(g)(ii)(E), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively; *provided*, with respect to this clause (E), to the extent that the proceeds of Loans under any Incremental Term Facility are to be used to finance a Limited Condition Acquisition, the availability thereof instead may be

subject to customary “SunGard” or “certain funds” conditionality to the extent agreed by the Lenders providing such Loans;

(F) the Administrative Agent shall have received (1) a certificate from a Responsible Officer of the Borrower certifying that (x) the conditions set forth in Sections 2.02(g)(ii)(B) and (g)(ii)(E) have been satisfied, and (y) the condition set forth in Section 2.02(g)(ii)(G) has been satisfied (which certification shall include reasonably detailed calculations, including quarterly detail, to demonstrate the satisfaction of such condition), (2) a certificate from a Responsible Officer of each Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to the incurrence of such Incremental Term Facility, and (3) if requested by the Administrative Agent, an opinion or opinions of counsel for the Loan Parties, dated as of the date of incurrence of such Incremental Term Facility and addressed to the Administrative Agent and each Lender, in form and substance satisfactory to the Administrative Agent;

(G) subject to Section 1.02(f), upon giving effect to the incurrence of any such Incremental Term Facility on a Pro Forma Basis, the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recent Measurement Period;

(H) the interest rate margins with respect to such Incremental Term Facility shall be as agreed by the Borrower and the Incremental Term Lenders for such Incremental Term Facility; provided that if the All-in-Yield for any Incremental Term Loan is greater than the All-in-Yield for the Term Facility or any then-existing Incremental Term Facility by more than 50 basis points, then the Applicable Rate for the Term Facility or such Incremental Term Facility, as applicable, shall be increased to the extent necessary so that the All-in-Yield for the applicable Incremental Term Loan is 50 basis points higher than the All-in-Yield therefor; provided, further, that in determining the All-in-Yield applicable to the Term Facility and any Incremental Term Facility, (x) original issue discount (“OID”) or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders thereof in the primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity), (y) customary arrangement or commitment fees payable to any arranger (or its affiliates) in connection therewith shall be excluded and (z) if the ~~Eurodollar~~BSBY Rate or Base Rate “floor” for the applicable Incremental Term Loan is greater than the ~~Eurodollar~~BSBY Rate or Base Rate “floor,” respectively, for the Term Facility or any then-existing Incremental Term Facility, the difference between such floor shall be equated to an increase in the All-in-Yield for purposes of this clause (iii);

(I) the Incremental Term Facility Maturity Date for such Incremental Term Facility shall be as set forth in the Incremental Term Facility Agreement relating to such Incremental Term Facility; provided, that, such date shall not be earlier than the then-Latest Maturity Date;

(J) the Weighted Average Life to Maturity of the Incremental Term Loans advanced under such Incremental Term Facility shall be no shorter than the then-remaining Weighted Average Life to Maturity of the Term Loan and any other then-existing Incremental Term Loans under any other then-existing Incremental Term Facility;

(K) subject to Sections 2.02(g)(ii)(I) and (g)(ii)(J), the amortization schedule applicable to the Incremental Term Loans advanced under such Incremental Term Facility shall be as determined by the Borrower and the Incremental Term Lenders for such Incremental Term Facility; and

(L) any such Incremental Term Facility shall (1) rank pari passu in right of payment with the Obligations and in respect of the Collateral, and (2) except as permitted by Sections 2.02(g)(ii)(H), (g)(ii)(I), (g)(ii)(J) and (g)(ii)(K), be on terms that are reasonably satisfactory to the Administrative Agent (it being understood and agreed that the following shall be deemed to be satisfactory to the Administrative Agent: (x) covenants or other provisions applicable only to periods after the then-Latest Maturity Date; (y) to the extent required by any Incremental Term Lender for such Incremental Term Facility, covenants or other provisions that are not set forth in Loan Documents at the time of incurrence of such Incremental Term Facility, so long as the Loan Documents are amended to include such covenants or other provisions for the benefit of the Administrative Agent and the Lenders at the time of the incurrence of such Incremental Term Facility; and (z) to the extent required by any Incremental Term Lender for such Incremental Term Facility, customary call protection and mandatory prepayments, in each case, which may be applicable solely with respect to such Incremental Term Facility; provided, that, with respect to any mandatory prepayment required in connection with the establishment of such Incremental Term Facility, such mandatory prepayment shall apply ratably to the Term Loan any other then-existing Incremental Term Loans under any then-existing Incremental Term Facility).

This Agreement and the other Loan Documents shall be amended to give effect to any Incremental Facility pursuant to documentation executed by lenders providing such Incremental Facility, the Administrative Agent and the Loan Parties, without the consent of any other Person (including any existing Lender), including amendments (I) to reflect the existence and terms of such Incremental Facility, (II) to make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of such Incremental Facility, including adding provisions to permit such Incremental Facility to share in the benefits of this Agreement and the other Loan Documents (including to permit any such Incremental Term Facility to share in any mandatory prepayment provided herein) and to include the lenders for such Incremental Facility in the definition of “Required Lenders”, (III) notwithstanding any other provisions of this Agreement or any other Loan Documents to the contrary, if applicable, to permit the loans under such Incremental Facility to be “fungible” (including for purposes of the Code) with any other then-existing Loans under this Agreement, and (IV) to effect such other amendments to the this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of any such Incremental Facility.

## 2.03

### Letters of Credit.

(a) The Letter of Credit Commitment. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request that the L/C Issuer, in reliance on the agreements of the Revolving Lenders set forth in this Section 2.03, issue, at any time and from time to time during the Availability Period, Letters of Credit denominated for its own account or the account of any of its Subsidiaries in such form as is acceptable to the Administrative Agent and the L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Revolving Commitments.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal.

- (i) To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer and to the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with clause (d) of this Section 2.03), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the L/C Issuer, the Borrower also shall submit a letter of credit application and reimbursement agreement on the L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application and reimbursement agreement or other agreement submitted by the Borrower to, or entered into by the Borrower with, the L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.
- (ii) If the Borrower so requests in any applicable Letter of Credit Application (or the amendment of an outstanding Letter of Credit), the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); *provided* that any such Auto-Extension Letter of Credit shall permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon by the Borrower and the L/C Issuer at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiration date not later than the date permitted pursuant to Section 2.03(d); *provided*, that the L/C Issuer shall not (A) permit any such extension if (1) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its extended form under the terms hereof (except that the expiration date may be extended to a date that is no more than one (1) year from the then-current expiration date) or (2) it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent that the majority of the Revolving Lenders have elected not to permit such extension or (B) be obligated to permit such extension if it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions set forth in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

- (c) Limitations on Amounts, Issuance and Amendment. A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (w) the aggregate amount of the outstanding Letters of Credit issued by the L/C Issuer shall not exceed its L/C Commitment, (x) the aggregate L/C Obligations shall not exceed the L/C Sublimit, (y) the Revolving Exposure of any Lender shall not exceed its Revolving Commitment and (z) the Total Revolving Exposure shall not exceed the total Revolving Commitments.
- (i) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:
- (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;
  - (B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;
  - (C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$100,000;
  - (D) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or
  - (E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.
- (ii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.
- (d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve (12) months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by

amendment, twelve months after the then-current expiration date of such Letter of Credit) and (ii) the date that is five (5) Business Days prior to the Maturity Date.

(e) Participations.

- (i) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (e) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments.
- (ii) In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by the L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by the Administrative Agent to the Revolving Lenders pursuant to Section 2.03(f) until such L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Maturity Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.03), and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Revolving Lenders have made payments pursuant to this clause (e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this clause (e) to reimburse the L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such L/C Disbursement.
- (iii) Each Revolving Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Sections 2.18 or 2.19, as a result of an assignment in accordance with Section 11.06 or otherwise pursuant to this Agreement.
- (iv) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(e), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the *greater of* the



Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (e)(vi) shall be conclusive absent manifest error.

(f) Reimbursement. If the L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall reimburse the L/C Issuer in respect of such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that the Borrower receives notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time (such date, as applicable, the "Reimbursement Date"), *provided* that, anything contained herein to the contrary notwithstanding, (x) unless the Borrower shall have notified the Administrative Agent and the L/C Issuer prior to 10:00 a.m. on the Reimbursement Date that the Borrower intends to reimburse the L/C Issuer in respect of such L/C Disbursement with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Loan Notice to the Administrative Agent requesting each Revolving Lender to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an equivalent amount, and (y) the Administrative Agent shall notify each Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "Unreimbursed Amount") and such Lender's Applicable Percentage thereof. Promptly upon receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the Unreimbursed Amount pursuant to Section 2.03(e)(ii), subject to the amount of the unutilized portion of the aggregate Revolving Commitments. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in clause (f) of this Section 2.03 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

- (i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect; or

any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

- (iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;
  - (v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;
  - (vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;
  - (vii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or
  - (viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.
- (h) Examination. The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.
- (i) Liability. None of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the L/C Issuer; *provided* that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination, and that:

- (i) the L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;
- (ii) the L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;
- (iii) the L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and
- (iv) this sentence shall establish the standard of care to be exercised by the L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (A) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (B) the L/C Issuer declining to take-up documents and make payment, (C) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor, (D) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (E) the L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to the L/C Issuer.

- (j) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued by it, the rules of the ISP shall apply. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.
- (k) Benefits. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

- (l) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate *times* the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any standby Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) payable on the first Business Day following the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit and (ii) accrued through and including the last day of each calendar quarter in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.
- (m) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. At any time there is more than one Lender, the Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum equal to the percentage separately agreed upon between the Borrower and the L/C Issuer, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable no later than the tenth Business Day after the end of each March, June, September and December in the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.
- (n) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by Applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if the L/C Issuer has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the L/C Issuer and the Lenders with respect to any such L/C Disbursement.
- (o) Interim Interest. If the L/C Issuer for any standby Letter of Credit shall make any L/C Disbursement, then, unless the Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; *provided* that if the Borrower fails to reimburse such L/C Disbursement when due pursuant to clause (f) of this Section 2.03, then Section 2.08(b) shall apply. Interest accrued pursuant to this clause (p) shall be for account of the L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to clause (f) of this Section 2.03 to reimburse the L/C Issuer shall be for account of such Lender to the extent of such payment.
- (p) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, indemnify and compensate the L/C Issuer

hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issued solely for the account of the Borrower. The Borrower irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

- (q) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

## **2.04 Swingline Loans.**

- (a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans to the Borrower (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Borrower, in Dollars, from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit; *provided, however*, that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility at such time, and (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment, (ii) the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swingline Loan shall bear interest only at a rate based on the Base Rate plus the Applicable Rate. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage times the amount of such Swingline Loan.

- (b) Borrowing Procedures.

Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (ii) telephone or (iii) a Swingline Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (A) the amount to be borrowed, which shall be a minimum of \$100,000, and (B) the requested date of the Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (1) directing the Swingline Lender not to make such Swingline Loan as a result of the

limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (2) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swingline Lender in immediately available funds.

(c) Refinancing of Swingline Loans.

- (i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.
- (ii) Notwithstanding anything to the contrary in the foregoing, if for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i) (including, without limitation, the failure to satisfy the conditions set forth in Section 4.02), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.
- (iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case

may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (c)(iii) shall be conclusive absent manifest error.

- (iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

- (i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Swingline Lender.

- (ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

- (e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Revolving Percentage of any Swingline Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swingline Lender.

- (f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

**2.05** Prepayments.

- (a) Optional.

- (i) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans, Revolving Loans and/or any Incremental

Term Loans in whole or in part without premium or penalty subject to Section 3.05; *provided* that, unless otherwise agreed by the Administrative Agent, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of EurodollarBSBY Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of EurodollarBSBY Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof, or, in each case, if less, the entire principal amount thereof then outstanding; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and whether the Loans to be prepaid are the Term Loans, the Revolving Loans, and/or the Incremental Term Loans and, if EurodollarBSBY Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a EurodollarBSBY Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of Term Loans and Incremental Term Loans pursuant to this Section 2.05(a) shall be applied to the Term Loans and any Incremental Term Loans as directed by the Borrower (and in the absence of such direction, to remaining unpaid installments in direct order of maturity). Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

- (ii) The Borrower may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; *provided* that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

- (i) Dispositions and Involuntary Dispositions. The Borrower shall prepay the Loans and/or Cash Collateralize the L/C Obligations as hereinafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds received by any Loan Party or any Subsidiary from all Dispositions (other than Dispositions generating less than \$200,000 of Net Cash Proceeds) and Involuntary Dispositions within five (5) Business Days of the date of such Disposition or Involuntary Disposition; *provided, however*, that so long as no Event of Default shall have occurred and be continuing, such Net Cash Proceeds shall not be required to be so applied (A) until the aggregate amount of the Net Cash Proceeds derived from any such Disposition or Involuntary Disposition in any fiscal year of the Borrower is equal to or greater than \$5,000,000 and (B) if, at the election of the



Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such Disposition or Involuntary Disposition), such Loan Party (directly or through one or more of its Subsidiaries) reinvests all or any portion of such Net Cash Proceeds in operating assets (other than current assets) within 365 days of the date of such Disposition or Involuntary Disposition (or to the extent it commits within such 365-day period to make such reinvestment, within one hundred eighty (180) days after such 365-day period); provided, further, that, for purposes of the foregoing clause (B), if such Net Cash Proceeds shall have not been so reinvested by the end of such period(s), such Net Cash Proceeds shall be applied within five (5) Business Days after the last day of such period to prepay the Loans and/or Cash Collateralize the L/C Obligations as provided in this Section 2.05(b). Any prepayment pursuant to this clause (ii) shall be applied as set forth in clause (iii) below.

- (ii) Debt Issuance. No later than the fifth (5<sup>th</sup>) Business Day following the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any Debt Issuance, the Borrower shall prepay the Loans and/or Cash Collateralize the L/C Obligations as hereinafter provided in an aggregate amount equal to one hundred percent (100%) of such Net Cash Proceeds. Any prepayment pursuant to this clause (ii) shall be applied as set forth in clause (iii) below.
- (iii) Application of Payments. Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, first, ratably to the Term Loans and any Incremental Term Loans and in the direct order of maturity to the next eight scheduled installments of principal of the Term Loans and the Incremental Term Loans, and thereafter, on a pro rata basis to the remaining installments of principal of the Term Loans and the Incremental Term Loans, respectively, second, to the outstanding Revolving Loans (without a corresponding permanent reduction of the Revolving Facility), and third, after the outstanding Revolving Loans have been paid in full, to Cash Collateralize the remaining L/C Obligations. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the relevant Facilities.
- (iv) Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the Borrower shall immediately prepay Revolving Loans, Swingline Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings exceed the Revolving Facility at such time.
- (v) Application of Other Payments. Except as otherwise provided in Section 2.15, prepayments of the Revolving Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swingline Loans, second, shall be applied to the outstanding Revolving Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the L/C Issuer or the Revolving Lenders, as applicable.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to ~~Eurodollar~~BSBY Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

- (c) Limitations. Notwithstanding any other provisions of this Section 2.05, to the extent that any or all of the Net Cash Proceeds of any Disposition by a Foreign Subsidiary (other than a Loan Party) or of any Involuntary Disposition with respect to assets of a Foreign Subsidiary (other than a Loan Party) would, in any such case, give rise to a prepayment event pursuant to Section 2.05(b)(i), to the extent that the Borrower has determined in good faith after consultation with the Administrative Agent that the inclusion of such Net Cash Proceeds in the calculation of any prepayments required under Section 2.05(b)(i) or repatriation or upstreaming thereof would or could reasonably be expected to result in adverse tax consequences to the Borrower or any Subsidiary or would violate any local Laws relating to the repatriation or upstreaming of such Net Cash Proceeds (including such Laws related to financial assistance and corporate benefit restrictions and fiduciary and statutory duties of the relevant directors), such Net Cash Proceeds will be excluded from any such calculation of required prepayments for so long, but only for so long, as the applicable adverse tax consequences remain or such inclusion would violate local laws, as applicable.

## **2.06 Termination or Reduction of Commitments.**

- (a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit; *provided* that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Letter of Credit Sublimit. Any such notice of termination or reduction pursuant to this Section 2.06(a) may state that it is conditioned upon the effectiveness of other credit facilities or capital raising, the consummation of a particular Disposition or the occurrence of a change of control, as specified in such notice, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.
- (b) Mandatory.
- (i) The aggregate Term Commitments shall be automatically and permanently reduced to zero on the date of the Term Borrowing.
- (ii) If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swingline Sublimit exceeds the Revolving Facility at such time, the Letter of Credit Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

- (c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swingline Sublimit or the Revolving Commitments under this Section 2.06. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

**2.07 Repayment of Loans**

- (a) Term Loans. The Borrower shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the orders of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.02:

<b>Payment Dates</b>	<b>Principal Repayment Installments</b>
December 31, 2021	\$1,250,000
March 31, 2022	\$1,250,000
June 30, 2022	\$1,250,000
September 30, 2022	\$1,250,000
December 31, 2022	\$1,250,000
March 31, 2023	\$1,250,000
June 30, 2023	\$1,250,000
September 30, 2023	\$1,250,000
December 31, 2023	\$3,125,000
March 31, 2024	\$3,125,000
June 30, 2024	\$3,125,000
September 30, 2024	\$3,125,000
December 31, 2024	\$3,125,000
March 31, 2025	\$3,125,000
June 30, 2025	\$3,125,000
September 30, 2025	\$3,125,000
December 31, 2025	\$3,125,000
March 31, 2026	\$3,125,000
June 30, 2026	\$3,125,000
Maturity Date of Term Loan	Remaining outstanding principal balance of Term Loans

*provided, however,* that (i) the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date, (ii) if any principal repayment installment to be made by the Borrower (other than principal repayment installments on Eurodollar BSBY Rate Loans) shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be and (iii) if any principal repayment installment to be made by the Borrower on a Eurodollar BSBY Rate Loan shall come due on a day other than a Business Day, such principal repayment installment shall be extended to

the next succeeding Business Day unless the result of such extension would be to extend such principal repayment installment into another calendar month, in which event such principal repayment installment shall be due on the immediately preceding Business Day.

- (b) Revolving Loans. The Borrower shall repay to the Revolving Lenders on the Maturity Date for the Revolving Facility the aggregate principal amount of all Revolving Loans outstanding on such date.
- (c) Swingline Loans. The Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Facility.
- (d) Incremental Term Loans. The Borrower shall repay the outstanding principal amount of all Incremental Term Loans under any Incremental Term Facility in the installments, on the dates and in the amounts set forth in the applicable Incremental Term Facility Agreement for such Incremental Term Facility (as such installments may hereafter be adjusted as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.02.

## **2.08 Interest and Default Rate.**

- (a) Interest. Subject to the provisions of Section 2.08(b), (i) each Eurodollar BSBY Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable Borrowing date at a rate per annum equal to the Eurodollar BSBY Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; and (iii) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Facility. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.
- (b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default under Section 8.01(f) or (g), or at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, all outstanding Obligations (including Letter of Credit Fees) may accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.
- (c) Interest Payments. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees.**

In addition to certain fees described in clauses (l) and (m) of Section 2.03:

- (a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a

commitment fee (the "Commitment Fee") equal to the Applicable Rate *times* the actual daily amount by which the Revolving Facility exceeds the *sum of* (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Revolving Facility for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and *multiplied by* the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

- (b) Other Fees. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## **2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

- (a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the ~~Eurodollar~~ BSBY Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred sixty (360) day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

- (b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Borrower and its Subsidiaries or for any other reason, the Borrower, or the Lenders determine that (i) the Consolidated Total Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Net Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This clause (b) shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. The Borrower's obligations under this clause (b) shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

## 2.11

### **Evidence of Debt.**

- (a) **Maintenance of Accounts.** The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.
- (b) **Maintenance of Records.** In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## 2.12

### **Payments Generally; Administrative Agent's Clawback.**

- (a) **General.** All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to Section 2.07(a) and as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
- (b) (i) **Funding by Lenders; Presumption by Administrative Agent.** Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar BSBY Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative

Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

- (ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

- (c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

- (d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

- (e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.
- (f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Section 2.09 and clauses (l) and (m) of Section 2.03 shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, *pro rata* according to the amounts of their respective Commitments; (ii) each Borrowing shall be allocated *pro rata* among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the Appropriate Lenders *pro rata* in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrower shall be made for account of the Appropriate Lenders *pro rata* in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

## **2.13 Sharing of Payments by Lenders**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and sub-participations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided* that:

- (i) if any such participations or sub-participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or sub-participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section 2.13 shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or Disqualified Institution), (B) the application of Cash



Collateral provided for in Section 2.14, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section 2.13 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

## **2.14 Cash Collateral.**

- (a) Obligation to Cash Collateralize. At any time there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or the L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.
- (b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.15(a)(v), after giving effect to Section 2.15(a)(v) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.
- (c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.
- (d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination

by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; *provided, however*, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (B) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## 2.15 Defaulting Lenders.

- (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:
- (i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.
- (ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Swingline Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations

in L/C Obligations and Swingline Loans are held by the Lenders *pro rata* in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(v). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any fee payable under Section 2.09(a) any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the L/C Issuer and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Revolving Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(v) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (B) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

- (b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with their Revolving Commitments (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.
- (c) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the L/C Issuer shall not be required to issue, extend, increase, reinstate or renew any letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

- (a) Defined Terms. For purposes of this Section 3.01, the term "Applicable Law" includes FATCA and the term "Lender" includes any L/C Issuer.
- (b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Laws. If any Applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- (c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (d) Tax Indemnifications.

- (i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.
- (ii) Each Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d)(ii).
- (e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (f) Status of Lenders; Tax Documentation.
- (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B),

and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

- (ii) Without limiting the generality of the foregoing, if the Borrower is a U.S. Person,
- (A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:
- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
- (2) executed copies of IRS Form W-8ECI;
- (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or
- (4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign

Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies (or originals, as required) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C) (i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this clause (f)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (g), in no

event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this clause (g) the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This clause (g) shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

- (h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund or charge interest with respect to any Credit Extension, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~BSBY, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (i) any obligation of such Lender to make or continue ~~Eurodollar~~BSBY Rate Loans or to convert Base Rate Loans to ~~Eurodollar~~BSBY Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar~~BSBY Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar~~BSBY Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (A) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all ~~Eurodollar~~BSBY Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar~~BSBY Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such ~~Eurodollar~~BSBY Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such ~~Eurodollar~~BSBY Rate Loans and (B) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the ~~Eurodollar~~BSBY Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurodollar~~BSBY Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the ~~Eurodollar~~BSBY Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

### 3.03 Inability to Determine Rates.

- (a) If in connection with any request for a ~~Eurodollar~~BSBY Rate Loan or a conversion to or continuation thereof, as applicable, (i) the Administrative Agent determines ~~that (A) deposits not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b),~~



and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred (as applicable) or (B) (+) adequate and reasonable means do not otherwise exist for determining the Eurodollar BSBY for any requested Interest Period with respect to a proposed BSBY Rate Loan or in connection with an existing or proposed Base Rate Loan or (ii) the Administrative Agent determines that for any reason the BSBY Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan and (2) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate BSBY Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended (to the extent of the affected Eurodollar BSBY Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar BSBY Rate component of the Base Rate, the utilization of the Eurodollar BSBY Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar BSBY Rate Loans (to the extent of the affected Eurodollar BSBY Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding BSBY Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding the foregoing anything to the contrary in this Agreement or any other Loan Documents, but without limiting Section 3.03(a) above, if the Administrative Agent has made the determination described in clause (a)(i) of this Section 3.03, the Administrative Agent in consultation with the Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section 3.03, (ii) the Administrative Agent or the Required Lenders determine (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to the Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(c) ~~Notwithstanding anything to the contrary herein or in any other Loan Document:~~

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of BSBY including, without limitation, because the BSBY Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) Bloomberg or any successor administrator of the BSBY Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or Bloomberg or such administrator with respect to its publication of BSBY, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of BSBY or the BSBY Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such interest periods of BSBY after such specific date (the latest date on which one month, three month and six month interest periods of BSBY or the BSBY Screen Rate are no longer available permanently or indefinitely, the “Scheduled Unavailability Date”);

~~(i) On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 3-month, 6-month and 12-month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes then, on a date and time determined by the Administrative Agent (any such date, the “BSBY Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, BSBY will be replaced hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document— (the “Successor Rate”);~~

(x) Term SOFR plus the SOFR Adjustment; and

(y) Daily Simple SOFR plus the SOFR Adjustment;

provided that, if initially BSBY is replaced with the rate contained in clause (y) above (Daily Simple SOFR plus the SOFR Adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Successor Rate shall be Term SOFR plus the SOFR Adjustment.

If the ~~Benchmark Replacement~~ Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a quarterly basis.

~~(ii) (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5<sup>th</sup>).~~

~~Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (L) of the definition of Benchmark Replacement unless the Administrative Agent determines that neither of such alternative rates is available.~~

~~(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.~~

~~(iii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.~~

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that neither of the alternatives set forth in clauses (x) and (y) above are available on or prior to the BSBY Replacement Date or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for purpose of replacing BSBY or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmarks which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

(iv) In connection with the implementation ~~and administration of a Benchmark Replacement~~ of a Successor Rate, the Administrative Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

~~(v) The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(e), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(e).~~

~~(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.~~

#### 3.04

##### **Increased Costs; Reserves on Eurodollar Rate Loans.**

(a) **Increased Costs Generally.** If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender ~~(except any reserve requirement contemplated by Section 3.04(e))~~ or the L/C Issuer;
- (ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

- (iii) impose on any Lender or the L/C Issuer ~~or the London interbank market~~ any other condition, cost or expense affecting this Agreement or Eurodollar BSBY Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

- (b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.
- (c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

~~(d) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to~~

~~give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.~~

- (e) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

### **3.05 Compensation for Losses.**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or
- (c) any assignment of a ~~Eurodollar~~BSBY Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

excluding any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay customary administrative fees charged by such Lender in connection with the foregoing. ~~A certificate as to any additional amount payable under this Section 3.05 submitted to the Borrower by any Lender (with a copy to the Administrative Agent), and showing in reasonable detail the basis for the calculation thereof, shall be conclusive, absent manifest error.~~

~~For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.~~

### **3.06 Mitigation Obligations; Replacement of Lenders.**

- (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower, such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the

judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

- (b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

### **3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

#### **4.01 Conditions of Initial Credit Extension.**

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

- (a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note executed by a Responsible Officer of the Borrower, (iii) counterparts of the Security Agreement and each other Collateral Document required to be executed on the Closing Date, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iv) counterparts of any other Loan Document required to be executed on the Closing Date, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.
- (b) Officer's Certificate. The Administrative Agent shall have received a certificate delivered by a Responsible Officer of each Loan Party, dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent of each Loan Party and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.
- (c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Administrative Agent.

- (d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 5.05, each in form and substance satisfactory to each of them.
- (e) Personal Property Collateral. The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:
- (i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches;
  - (ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as requested by the Administrative Agent in order to perfect the Administrative Agent's security interest in the Intellectual Property;
  - (iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;
  - (iv) stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated; and
  - (v) to the extent required to be delivered, filed, registered or recorded pursuant to the terms and conditions of the Collateral Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to create and perfect the Administrative Agent's and the Lenders' security interest in the Collateral.
- (f) Liability, Casualty, Property and Business Interruption Insurance. The Administrative Agent shall have received certificates and endorsements of insurance evidencing liability, casualty, property and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as required by the Administrative Agent.
- (g) Solvency Certificate. The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower as to the financial condition, solvency and related matters of the Borrower and its Subsidiaries, taken as a whole, after giving effect to the initial Borrowings under the Loan Documents and the other transactions contemplated hereby.
- (k) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Loans to be made on the Closing Date.
- (l) Existing Indebtedness of the Loan Parties. All of the existing Indebtedness for borrowed money of the Borrower and its Subsidiaries (including Indebtedness under the Existing Credit Agreement but excluding Indebtedness permitted to exist pursuant to Section 7.02) shall be (or substantially concurrently with the initial borrowing will be) repaid in full, and all security interests securing the same shall be terminated on or prior to the Closing Date.



- (m) Anti-Money-Laundering; Beneficial Ownership. Upon the reasonable request of any Lender in writing (including by email), the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.
- (n) Consents. The Administrative Agent shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals in respect of the Loan Parties necessary for their entry into this Agreement have been obtained.
- (o) Fees and Expenses. The Administrative Agent and the Lenders shall have received (or, if applicable, will receive simultaneously with the funding of the proceeds from the initial funding of the Loans on the Closing Date) (i) all expenses required to be paid by the Borrower to the Administrative Agent and the Lenders for which invoices have been presented at least one (1) Business Day prior to the Closing Date, and (ii) all fees, if any, due and owing by the Borrower to the Administrative Agent and the Lenders on or prior to the Closing Date pursuant to the Engagement Letter and Section 2.09.

Without limiting the generality of the provisions of Section 9.03(c), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto

#### **4.02 Conditions to all Credit Extensions.**

The obligation of each Lender and each L/C Issuer to honor any Request for Credit Extension (other than, with respect to clauses (a) and (b) below, a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of ~~EuroDollar~~BSBY Rate Loans) is subject to the following conditions precedent:

- (a) Representations and Warranties. Subject to Sections 2.02(g)(ii)(B) and (E), the representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.
- (b) Default. Subject to Section 2.02(g)(ii)(B), no Default shall exist or would result immediately after giving effect to such proposed Credit Extension or from the application of the proceeds thereof.

- (c) Request for Credit Extension. The Administrative Agent and, if applicable, the applicable L/C Issuer or the Swingline Lender, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar BSBY Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

#### **5.01 Existence, Qualification and Power.**

Each Loan Party and each of its Subsidiaries (a) is (i) duly organized or formed and validly existing and (ii) as applicable, in good standing, in each case, under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a)(ii) (other than with respect to the Borrower and, solely on the Closing Date, any other Loan Party) clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **5.02 Authorization; No Contravention.**

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any material arbitral award to which such Person or its property is subject; or (c) violate any Applicable Law, except in any case referred to in clause (b)(i), to the extent that such conflict, breach, contravention or payment (but not creation of Liens) would not reasonably be expected to have a Material Adverse Effect.

#### **5.03 Governmental Authorization; Other Consents.**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained or are required

for the exercise by the Administrative Agent or any Lender of remedies in respect of Collateral pursuant to the Collateral Documents in the ordinary course, (ii) filings to perfect the Liens created by the Collateral Documents, and (iii) those approvals, consents, exemptions, authorizations, filings or other actions or notices the failure of which to obtain or make could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **5.04 Binding Effect.**

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and the enforcement thereof and subject to general principals of equity.

#### **5.05 Financial Statements; No Material Adverse Effect.**

- (a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in Shareholders' Equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities of the Borrower and its Subsidiaries required to be set forth therein in accordance with GAAP.
- (b) Quarterly Financial Statements. The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated June 30, 2021, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in Shareholders' Equity for the period covered thereby, subject to the absence of footnotes and to normal year-end and audit adjustments.
- (c) Material Adverse Effect. Since December 31, 2020, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

#### **5.06 Litigation.**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues (a) on the Closing Date that purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**5.07**                    **No Default.**

Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing.

**5.08**                    **Ownership of Property.**

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.09**                    **Environmental Compliance.**

The Borrower has reasonably concluded that the Loan Parties and their Subsidiaries are not in violation of Environmental Laws and there are no claims against the Loan Parties or their Subsidiaries alleging violations of Environmental Law that in either case would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10**                    **Insurance.**

The properties of the Borrower and its Subsidiaries are insured with insurance companies not Affiliates of the Borrower that, to the Borrower's knowledge, are financially sound and reputable, in such amounts with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates.

**5.11**                    **Taxes.**

Each Loan Party and its Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, and have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that could reasonably be expected to have a Material Adverse Effect, nor is there any tax sharing agreement applicable to the Borrower or any Subsidiary (other than any such agreements among the same).

**5.12**                    **ERISA Compliance.**

(a)                    Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the Borrower, nothing has occurred that would reasonably be expected to prevent or cause the loss of such tax-qualified status.

- (b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) Except as would not reasonably be expected to result in a Material Adverse Effect, no ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan.
- (d) Except as would not reasonably be expected to result in a Material Adverse Effect (i) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (ii) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA.
- (e) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using “plan assets” (within the meaning of Section 3(42) of ERISA) of one or more Benefit Plans with respect to the Borrower’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

**5.13 Margin Regulations; Investment Company Act.**

- (a) Margin Regulations. Neither the Borrower nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower or any of its Subsidiaries and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.
- (b) Investment Company Act. None of the Borrower or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.14 Disclosure.**

No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished), when all taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; *provided* that, with respect to projected financial information, each

Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to certain contingencies and assumptions beyond the control of the Borrower and its Subsidiaries, and no assurance can be given that such projections will be realized).

**5.15 Compliance with Laws.**

Each Loan Party and each Subsidiary thereof is in compliance with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings or other action diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.16 Solvency.**

On and as of the Closing Date, after giving effect to the transactions occurring on the Closing Date, the Borrower and its Subsidiaries, taken as a whole on a Consolidated basis, are Solvent.

**5.17 Sanctions Concerns and Anti-Corruption Laws.**

- (a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.
- (b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**5.18 Subsidiaries; Equity Interests; Loan Parties.**

- (a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 5.18(a) is the following information which is true and complete in all respects as of the Closing Date: (i) a complete and accurate list of all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties as of the Closing Date, (ii) the number of shares of each class of Equity Interests in each Subsidiary outstanding, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries, (iv) the class or nature of such Equity Interests (*i.e.*, voting, non-voting, preferred, etc.), and (v) whether each Subsidiary is a Material Subsidiary as of the Closing Date. The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens (other than Permitted Liens). There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating

to the Equity Interests of any Loan Party (other than the Borrower) or any Subsidiary thereof, except as not prohibited under the Loan Documents.

- (b) Loan Parties. Set forth on Schedule 5.18(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the address of its chief executive office, (vi) the address of its principal place of business, (vii) its U.S. federal taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, if applicable, its unique identification number issued to it by the jurisdiction of its incorporation or organization, (viii) the organization identification number, and (ix) ownership information (*e.g.*, publicly held or if private or partnership, the owners and partners of each of the Loan Parties).

**5.19 Collateral Representations.**

- (a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.
- (b) Intellectual Property. Set forth on Schedule 5.19(b), as of the Closing Date, is a list of all U.S. federally registered or issued Intellectual Property (including all applications for registration and issuance) owned by each of the Loan Parties or that each of the Loan Parties has the right to (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by the Administrative Agent).
- (c) Properties. Set forth on Schedule 5.19(c), as of the Closing Date, is a list of all real property located in the United States that is owned or leased by any Loan Party (in each case, including (i) the name of the Loan Party owning (or leasing) such property, (ii) the property address, and (iii) the city, county, state and zip code which such property is located).

**5.20 Affected Financial Institutions.**

No Loan Party is an Affected Financial Institution.

**5.21 Covered Entities.**

No Loan Party is a Covered Entity.

**5.22 Beneficial Ownership Certification.**

As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

#### **6.01 Financial Statements.**

Deliver to the Administrative Agent (which shall provide to each Lender):

- (a) Audited Financial Statements. Within ninety (90) days after the end of each fiscal year of the Borrower (or, if earlier, when required to be filed with the SEC), commencing in respect of the fiscal year ending December 31, 2021, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in Shareholders' Equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than such exception or qualification that is with respect to, or expressly resulting solely from the occurrence of the Maturity Date under this Agreement that is scheduled to occur within one (1) year from the time such report and opinion are delivered).
- (b) Quarterly Financial Statements. Within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or, if earlier, when required to be filed with the SEC), commencing in respect of the fiscal quarter ending September ~~31~~<sup>30</sup>, 2021), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, changes in Shareholders' Equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries, subject to normal year-end and audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

#### **6.02 Certificates; Other Information.**

Deliver to the Administrative Agent (which shall provide to each Lender):

- (a) Compliance Certificate. Within the time period the financial statements referred to in Sections 6.01(a) and (b) are due, a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower. Except to the extent, if any, the Administrative Agent or



(through the Administrative Agent) a Lender requests (at least ten (10) Business Days prior to the due date thereof) executed originals, delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

- (b) Audit Reports; Management Letters; Recommendations. Promptly after any request by the Administrative Agent or (through the Administrative Agent) any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.
- (c) Annual Reports; Etc. Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.
- (d) Debt Securities Statements and Reports. Promptly after the furnishing thereof, copies of any material statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement, in each case, with an outstanding principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.
- (e) SEC Notices. Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof (or such longer period as is acceptable to the Administrative Agent), copies of each material notice or other material correspondence received from the SEC (or comparable agency of competent jurisdiction in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.
- (f) Notices. (i) Promptly after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all written notices of default or event of default received under or pursuant to any instrument, indenture, loan or credit or similar agreement with an outstanding principal amount in excess of the Threshold Amount, (ii) promptly after execution or effectiveness thereof, copies of any amendment, waiver or other modification in respect of any such indenture, loan or credit or similar agreement with an outstanding principal amount in excess of the Threshold Amount, and (iii) from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements with an outstanding principal amount in excess of the Threshold Amount as the Administrative Agent may reasonably request.
- (g) Environmental Notice. Promptly after the written assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect.
- (h) Anti-Money-Laundering; Beneficial Ownership Regulation. Promptly following any request therefor, information and documentation reasonably requested by the Administrative

Agent or (through the Administrative Agent) any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act.

- (i) Beneficial Ownership. To the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification.
- (j) Additional Information. Promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or (through the Administrative Agent) any Lender may from time to time reasonably request; *provided* that nothing in this clause (j) shall require any Loan Party or Subsidiary to take any action that would violate any third party customary confidentiality agreement with any Person that is not an Affiliate or waive any attorney client or similar privilege or otherwise not be required to be disclosed pursuant to the last sentence of Section 6.10.

Documents required to be delivered pursuant to Section 6.01(a) or (b), Section 6.02(c), (d), (e) or (f) or Section 6.03(d) (to the extent any such documents, notice or other items are included in materials otherwise filed with the SEC) may be delivered electronically and shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address listed on Schedule 1.01(a); or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by fax transmission or e-mail transmission) of the posting thereof.

The Borrower hereby acknowledges that (i) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the “Platform”) and (ii) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (A) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (B) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (C) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (D) the Administrative Agent and any Affiliate thereof and the Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC”.

**6.03**                    **Notices.**

Promptly, but in any event within five (5) Business Days (except that, with respect to Section 6.03(a) only, such time period shall be three (3) Business Days) of a Responsible Officer of the Borrower obtaining knowledge thereof) notify the Administrative Agent:

- (a)                    of the occurrence of any Default;
- (b)                    of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c)                    of the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect;
- (d)                    of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof, including any determination by the Borrower referred to in Section 2.10(b); and
- (e)                    of any (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(i), and (ii) Debt issuance for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(ii).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04**                    **Payment of Taxes.**

Pay and discharge as the same shall become due and payable, all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary.

**6.05**                    **Preservation of Existence, Etc.**

- (a)                    Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05, unless (other than with respect to the preservation of the legal existence of the Loan Parties and the good standing of the Borrower) the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b)                    take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and
- (c)                    preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06** **Maintenance of Properties.**

- (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, except to the extent failure to do so could reasonably be expected to have a Material Adverse Effect; and
- (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07** **Maintenance of Insurance.**

- (a) Maintenance of Insurance. Maintain with insurance companies not Affiliates of the Borrower believed by the Borrower to be financially sound and reputable, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, with any such property or general liability insurance to (i) provide for not less than thirty (30) days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance (or ten (10) days' prior notice in the case of cancellation due to the nonpayment of premiums), and (ii) name the Administrative Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable.
- (b) Flood Insurance. If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (v) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent. The Borrower shall promptly notify the Administrative Agent of any Mortgaged Property that is, or becomes, a Flood Hazard Property.
- (c) Evidence of Insurance. Cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing general liability or property coverage, and cause, unless otherwise agreed to by the Administrative Agent, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). As requested by the Administrative Agent, the Loan Parties agree to deliver to the Administrative Agent an Authorization to Share Insurance Information, in a form acceptable to the Administrative Agent.

**6.08** **Compliance with Laws.**

Comply with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings or other

action diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09**                    **Books and Records.**

- (a)                    Maintain proper books of record and account, in which full, true and correct entries in conformity in all material respects with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be; and
- (b)                    maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

**6.10**                    **Inspection Rights.**

Permit representatives and independent contractors of the Administrative Agent (which may be accompanied by representatives and independent contractors of one or more Lenders) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (to the extent the Borrower's officers are afforded a reasonable opportunity to participate), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that (i) so long as no Event of Default then exists, except for one collective visit per calendar year (which shall be at the reasonable expense of the Borrower), all such visits and inspections shall be at the sole expense of the Administrative Agent and participating Lenders and such visits and inspections shall occur no more frequently than semi-annually, (ii) when an Event of Default exists the Administrative Agent (which may be accompanied by one or more Lenders) (or any of their respective representatives or independent contractors) may do any of the foregoing at the reasonable expense of the Borrower at any time during normal business hours and without advance notice and (iii) in respect of any such discussions with any independent accountants, the Borrower or such Subsidiary, as the case may be, must receive reasonable advance notice thereof and a reasonable opportunity to participate therein and such discussions will be subject to the execution of any non-reliance letter or other customary requirements of such accountants. Notwithstanding anything to the contrary in this Section 6.10, no Loan Party or Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (x) that constitutes non-financial trade secrets, (y) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by requirements of Law or any binding agreement (not entered into in contemplation hereof), or (z) that is subject to attorney client privilege or constitutes attorney work product.

**6.11**                    **Use of Proceeds.**

Use the proceeds (a) of the Term Facility and Revolving Facility to (i) refinance certain existing indebtedness of the Borrower and its subsidiaries; (ii) pay fees and expenses incurred in connection with the transactions contemplated in this Agreement; and (iii) provide ongoing working capital and for other general corporate purposes of the Loan Parties and their subsidiaries; and (b) and of any Incremental Facility for any general corporate purpose of the Borrower agreed to by the lenders thereof (including for Permitted Acquisitions and other permitted Investments, permitted Restricted Payments, Permitted Refinancings and any other transaction not prohibited by this Agreement or any other Loan Document); in each case, not in contravention of any Law or of any Loan Document.

**Covenant to Guarantee Obligations.**

Within forty-five (45) days (or such longer period of time as is agreed to by the Administrative Agent in its sole discretion) after the acquisition or formation of any Subsidiary (other than an Excluded Subsidiary), or the designation by the Borrower in its sole discretion of a Foreign Subsidiary to become a Designated Foreign Subsidiary Guarantor or an Immaterial Subsidiary as not being an Excluded Subsidiary, (a) cause such Person to become a Guarantor hereunder by way of execution of a Joinder Agreement or, in the case of a Designated Foreign Subsidiary Guarantor, such other documentation as may be reasonably requested by the Administrative Agent for such Foreign Subsidiary to become a Guarantor, all such documentation to be in form and substance reasonably satisfactory to the Administrative Agent, and (b) provide all other documentation and other information reasonably requested by the Administrative Agent or (through the Administrative Agent) any Lender to satisfy applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, all in form, content and scope reasonably satisfactory to the Administrative Agent. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.01(b) and (e) and Section 6.13 and favorable opinions of counsel to such Person (which should cover, among other things, the legality, binding effect and enforceability) and, with respect to any Designated Foreign Subsidiary Guarantor, the Loan Parties shall deliver such other documentation and deliverables, and take such other actions, as reasonably requested by the Administrative Agent, in each case, as are customary in the applicable jurisdiction in connection with the making of a Guarantee or granting of a security interest by a Person in such jurisdiction, all in form, content and scope reasonably satisfactory to the Administrative Agent.

**Covenant to Give Security.**

Except with respect to Excluded Property:

- (a) Equity Interests and Personal Property. Within forty-five (45) days (or such longer period of time as is agreed to by the Administrative Agent in its sole discretion) after the formation or acquisition of any Subsidiary (other than an Excluded Subsidiary) by any Loan Party, or of any Subsidiary no longer constituting an Excluded Subsidiary, cause (i) one hundred percent (100%) of the issued and outstanding Equity Interests of each Material Wholly Owned Domestic Subsidiary (other than any FSHCO) and (ii) sixty-five percent (65%) (or such greater percentage that could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Material Wholly Owned Foreign Subsidiary or Material Wholly Owned Domestic Subsidiary that is a FSHCO, in each case, directly owned by any Loan Party to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents, and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may reasonably request, including any filings and deliveries to perfect such Liens and favorable opinions of counsel all in form and substance reasonably satisfactory to the Administrative Agent.
- (b) Other Property. With respect to any property (other than Excluded Property) acquired by any Loan Party after the Closing Date that is not subject to a Lien thereunder, but in any event subject to the terms, conditions and limitations thereunder, within sixty (60) days after the acquisition thereof (or, in the case of real property, one hundred twenty (120) days) (or, in each case, such longer period of time as is agreed to by the Administrative Agent in its sole discretion), such Loan Party shall (i) cause all such property to be subject to first priority, perfected and, in the case of real property, title insured Liens in favor of the Administrative Agent to secure the Secured

Obligations pursuant to the Collateral Documents to the extent required thereunder and, (ii) in connection with the foregoing, upon the Administrative Agent's reasonable request, deliver to the Administrative Agent such other documentation, including filings and deliveries necessary to perfect such Liens, Organization Documents, resolutions, Mortgages, Mortgaged Property Support Documents and favorable opinions of counsel to such Person, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) Limitations.

(i) Notwithstanding anything to the contrary in this Section 6.13, the Loan Parties shall not be required, nor shall the Administrative Agent be authorized to take, absent agreement of the Borrower, any action in any jurisdiction outside of the United States (other than, with respect to any Designated Foreign Subsidiary Guarantor, the Approved Jurisdiction in which such Designated Foreign Subsidiary Guarantor is organized) to create or perfect any security interest with respect to any assets located outside of the United States (it being understood that, absent agreement of the Borrower, there shall be no security agreements or pledge agreements governed under the laws of any jurisdiction outside the United States (other than, with respect to any Designated Foreign Subsidiary Guarantor, the Approved Jurisdiction in which such Designated Foreign Subsidiary Guarantor is organized)).

(ii) If, at any Loan Party following the pledge by any Loan Party in favor of the Administrative Agent of greater than sixty-five percent (65%) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of any Material Wholly Owned Foreign Subsidiary or Material Wholly Owned Domestic Subsidiary that is a FSHCO directly owned by such Loan Party, the Borrower determines in its reasonable business judgment that such pledge is reasonably expected to cause any material adverse tax consequences to the Borrower or its Subsidiaries, the Administrative Agent shall, upon the request of the Borrower, reasonably promptly release and discharge its Lien on such Equity Interests to the extent exceeding sixty-five percent (65%) thereof, and the Administrative Agent agrees to take all actions reasonably requested by the Borrower to evidence such discharge and release.

**6.14** Anti-Corruption Laws; Sanctions.

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

**6.15** Further Assurances.

Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) cooperate in the correction of any material defect or error discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) subject to Section 6.13(c), do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be

created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

### **Post-Closing Covenant.**

#### **6.16 Post-Closing Covenant.**

The Loan Parties shall comply with their obligations described in Schedule 6.16, in each case, within the applicable periods of time specified in such Schedule with respect to the relevant item (or such longer periods as the Administrative Agent may agree in its reasonable discretion). Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the parties hereto acknowledge and agree that all conditions precedent and representations and covenants contained in this Agreement and the other Loan Documents shall be deemed modified to the extent appropriate to permit such actions within such time frames set forth on Schedule 6.16 rather than on the Closing Date.

## **ARTICLE VII**

### **NEGATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

#### **7.01 Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Closing Date and listed on Schedule 7.01 and any modifications, replacements, renewals, restructurings, refinancings or extensions thereof; *provided, that* (i) any such Lien does not encumber any property other than (A) property encumbered on the Closing Date, (B) after-acquired property that is affixed or incorporated into the property covered by such Lien on the Closing Date and (C) proceeds and products thereof and (ii) the modification, replacement, renewal, restructuring, refinancing or extension of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.02;
- (c) inchoate Liens for Taxes not yet delinquent for more than thirty (30) days or which are being contested in good faith and by appropriate proceedings or other action diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings or other action diligently conducted; *provided, that*, adequate reserves with respect thereto are maintained on the books of the applicable Person;
- (e) Liens (other than any Lien imposed by ERISA) (i) imposed by requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with



workers' compensation, unemployment insurance and other types of social security legislation, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided, that*, (A) with respect to clauses (i), (ii) and (iii), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP and (B) to the extent such Liens are not imposed by requirements of Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents issued to support payment of such obligations;

- (f) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any real property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such real property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Borrower at such real property;
- (g) Liens arising out of judgments, attachments or awards not resulting in an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings or other action and for which adequate reserves have been made;
- (h) Liens securing Indebtedness permitted under Section 7.02(c); *provided, that*: (i) such Liens do not at any time encumber any property other than the property financed by or leased pursuant to such Indebtedness together with any accessions or additions thereto, any proceeds and replacements thereof, and customary security deposits (it being understood that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender), (ii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets plus the amount of any fees or other expenses incurred in connection therewith and (iii) such Liens attach to such property concurrently with or within two hundred seventy (270) days after the acquisition, construction, repair or lease thereof or improvement thereon, as the case may be;
- (i) Liens securing Indebtedness permitted pursuant to Section 7.02(d); *provided, that*: (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property of the Borrower or any other Subsidiary (other than improvements on the property subject thereto, accessions thereto and proceeds thereof), and (iii) such Lien shall secure only those obligations it secures on the date of acquisition, and any renewals, replacements, refinancings, restructurings or extensions thereof so long as permitted under Section 7.02(d);
- (j) leases of the properties of the Borrower or any Subsidiary granted by the Borrower or such Subsidiary to third parties, in each case entered into in the ordinary course of business so long no such leases, individually or in the aggregate, interfere in any material respect with the ordinary conduct of the business of the Borrower and its Subsidiaries or materially impair the use (for its intended purposes) or the value of the property subject thereto;
- (k) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business;

- (l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided, that*, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;
- (m) non-exclusive licenses and sublicenses of Intellectual Property granted by the Borrower or any Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Borrower;
- (n) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;
- (o) Liens attached to cash earnest money deposits made by a Loan Party in connection with any letter of intent or purchase agreement entered into by a Loan Party;
- (p) Liens on Equity Interests of a Foreign Subsidiary or assets to be sold pursuant to an agreement entered into for the Disposition of all or substantially all the Equity Interests or assets of a Foreign Subsidiary, in each case to the extent permitted by the terms hereof, pending the closing of such Disposition; *provided, that*, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;
- (q) 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;
- (r) Liens on Equity Interests of any Foreign Subsidiary or on the property of any Foreign Subsidiary, in each case, that arise by operation of law;
- (s) the deposit or other pledge of cash collateral pursuant to the terms of, and to secure obligations under, Swap Contracts permitted under Section 7.02(j);
- (t) Liens on the property of Subsidiaries that are not Loan Parties securing Indebtedness of such Subsidiaries permitted under Section 7.02(n); *provided, that*, such Liens are limited to the property of any such Subsidiary that is not a Loan Party; and
- (u) other Liens not permitted by the foregoing clauses of this Section 7.01 securing Indebtedness or other obligations permitted pursuant to this Agreement in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding.

**7.02 Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
- (b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 (and any Permitted Refinancing thereof);

- (c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations incurred by the Borrower and its Subsidiaries to finance the purchase, lease, construction, repair or improvement of fixed or capital assets, and renewals, refinancings and extensions thereof; *provided, that*, the total of all such Indebtedness for all such Persons taken together at any one time outstanding shall not exceed an aggregate principal amount equal to \$10,000,000;
- (d) Indebtedness (and any Permitted Refinancing thereof) of any Target acquired after the Closing Date or of any Person that becomes a Subsidiary, in each case, in a Permitted Acquisition, to the extent such Indebtedness is existing at the time of such Permitted Acquisition; *provided, that*, (i) such Indebtedness shall not have been incurred in contemplation of such Permitted Acquisition, and (ii) after giving effect to the acquisition of any such Indebtedness, the aggregate principal amount of all Indebtedness acquired and outstanding pursuant to this clause (d), shall not exceed at any one time \$10,000,000;
- (e) Indebtedness in respect of bid, performance or surety bonds, completion guarantees and appeal bonds, workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of the Borrower and its Subsidiaries in the ordinary course of business, including guarantees or obligations of the Borrower and its Subsidiaries with respect to letters of credit supporting such bid, performance or surety bonds, completion guarantees and appeal bonds, workers' compensation claims, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed);
- (f) (i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds and other Indebtedness in respect of netting services, overdraft protections and similar arrangements, in each case, in the ordinary course of business; *provided, that*, such Indebtedness is extinguished within sixty (60) days of incurrence and (ii) Indebtedness under any Secured Cash Management Agreement entered into in the ordinary course of business;
- (g) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;
- (h) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;
- (i) intercompany Indebtedness permitted under Section 7.03 (other than by reference to this Section 7.02 (or any clause hereof)); *provided, that*, in the case of Indebtedness owing by a Loan Party to any Subsidiary that is not a Loan Party, promptly upon the written request of the Administrative Agent, such Indebtedness shall be subordinated to the Secured Obligations in a manner and to the extent acceptable to the Administrative Agent;
- (j) obligations (contingent or otherwise) existing or arising under any Swap Contract; *provided, that*, such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view";
- (k) to the extent constituting Indebtedness, Earn Out Obligations incurred in connection with any Permitted Acquisition;

- (l) Indebtedness consisting of promissory notes issued by the Borrower or any Subsidiary to current or former officers, employees or directors of the Borrower or any Subsidiary (or any of their respective estates, heirs, spouses or former spouses) to finance the purchase or redemption of Qualified Equity Interests of the Borrower, in each case, so long as (i) the corresponding purchase or redemption is permitted by Section 7.06(g) and (ii) the aggregate amount of all such Indebtedness does not exceed \$10,000,000 at any one time outstanding;
- (m) Indebtedness incurred by any Loan Party constituting indemnification, adjustment of purchase price or similar obligations, in each case, in connection with Permitted Acquisitions, any other similar Investment permitted hereunder (including through a merger) or any disposition permitted hereunder;
- (n) Indebtedness of Subsidiaries that are not Loan Parties in an aggregate amount for all such Indebtedness not to exceed \$10,000,000 at any one time outstanding;
- (o) Indebtedness representing deferred compensation to employees of the Borrower (or any direct or indirect parent thereof) and its Subsidiaries incurred in the ordinary course of business;
- (p) to the extent constituting Indebtedness, any Permitted Warrant Transaction;
- (q) Permitted Subordinated Debt;
- (r) Guarantees with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 7.02; *provided, that*,  
(i) if such Indebtedness is subordinated to the Secured Obligations, such Guarantee shall be subordinated to the Secured Obligations on terms, taken as a whole, at least as favorable to the Lenders (as determined in the Borrower's good faith judgment in consultation with the Administrative Agent) as those contained in the subordination of such Indebtedness, taken as a whole, and  
(ii) such Guarantee is otherwise permitted as an Investment under Section 7.03 (other than Section 7.03(s));
- (s) obligations of the Borrower or its Subsidiaries (including Guaranties by the Borrower or any Subsidiary) in respect of any "supply chain" or other similar financing program provided by a Lender or Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of entry into such program) for vendors or suppliers of the Borrower or any Subsidiary of the Borrower pursuant to which trade payables owed to such vendor or supplier are acquired by such Lender or Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of entry into such program), so long as (i) such Indebtedness is unsecured, and (ii) such Indebtedness represents amounts not in excess of those which the Borrower or any of its Subsidiaries would otherwise have been obligated to pay to its vendor or supplier in respect of the applicable trade payables ("Permitted Supply Chain Financing");
- (st) other Indebtedness not permitted by any of the foregoing clauses of this Section 7.02, in an aggregate principal amount not to exceed at any one time outstanding \$10,000,000; and
- (tu) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest and interest accreted to principal), fees, expenses, charges and additional or contingent interest on obligations described in any of clauses (a) through (st) of this Section 7.02.

### **7.03 Investments.**

Make or hold any Investments, except:

- (a) Investments existing as of the Closing Date and set forth on Schedule 7.03 any modifications, replacements, renewals, reinvestments or extensions thereof; *provided, that*, the amount of any such Investment permitted pursuant to this clause (a) is not increased from the amount of such Investment on the Closing Date except to the extent such increase is incurred in reliance on another clause of this Section 7.03;
- (b) Investments (i) between and among the Loan Parties and (ii) Investments by any Loan Party in any Subsidiary that is not a Loan Party; *provided, that*, such Investments made in reliance on this clause (b)(ii) shall not exceed at any one time outstanding \$25,000,000;
- (c) Investments made by any Subsidiary that is not a Loan Party in (i) any other Subsidiary that is not a Loan Party or (ii) any Loan Party; *provided, that*, to the extent that any such Investment incurred in reliance on this clause (c)(ii) constitutes loans or advances made to any Loan Party, promptly upon the written request of the Administrative Agent, such loans or advances shall be subordinated in right of payment to the Secured Obligations pursuant to subordination provisions reasonably acceptable to the Administrative Agent;
- (d) the Borrower and its Subsidiaries may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, provided that such trade terms may include such concessionary trade terms in the ordinary course of business as the Borrower and its Subsidiaries deem reasonable under the circumstances, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;
- (e) (i) ordinary course of business advances, loans or extensions of credit (A) by the Borrower or any Subsidiary in compliance with applicable Laws to directors, members, employees and officers of the Borrower or any Subsidiary for travel, entertainment or relocation, out of pocket or other business-related expenses in the ordinary course of business or (B) constituting advances of payroll payments or commissions payments to employees and (ii) for purposes not described in the foregoing clause (e)(i), loans and advances to directors, members, employees and officers of the Borrower and its Subsidiaries for bona fide business purposes, including the purchase of Qualified Equity Interests of the Borrower, in an aggregate amount not to exceed \$2,000,000 at any one time outstanding;
- (f) (i) Permitted Acquisitions and (ii) the Specified Acquisition;
- (g) Investments in securities of trade creditors or customers in the ordinary course of business received in connection with the settlement of debts, the satisfaction of judgments, settlements, compromises or resolutions of litigation, arbitration or other disputes, upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;
- (h) Investments to the extent that such Investments are made with the net proceeds of the issuance of Qualified Equity Interests of the Borrower after the Closing Date or proceeds of an equity contribution made to the Borrower after the Closing Date, in each case, to the extent not resulting in a Change of Control and to the extent such proceeds are Not Otherwise Applied;
- (i) Investments consisting of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business of the Borrower and its Subsidiaries;

- (j) Investments consisting of cash earned money deposits in connection with a Permitted Acquisition;
- (k) advances to suppliers of amounts provided by customers for the purchase of materials and the preparation of goods and inventory in respect of customer contracts entered into in the ordinary course of business;
- (l) Investments held by a Person acquired or merged into a Loan Party so long as such Investments (i) were not acquired in contemplation of such acquisition or merger and (ii) do not require any additional capital contributions to be made by the Borrower or any Subsidiary;
- (m) Investments consisting of Swap Contracts permitted under Section 7.02(j);
- (n) asset purchases (including purchases of inventory, supplies and materials) and the non-exclusive licensing or contribution of intellectual property or software in the ordinary course of business consistent with past practices pursuant to joint development, joint commercialization, joint marketing or other collaboration arrangements with other Persons;
- (o) contributions to a “rabbi” trust pursuant to a deferred compensation plan of the Borrower or any of its Subsidiaries for the benefit of employees or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower;
- (p) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions, Restricted Payments and prepayments of Indebtedness permitted under Section 7.01, Section 7.02, Section 7.04, Section 7.05, Section 7.06 and Section 7.13, respectively, and sales, transfers, leases, licenses or other dispositions not constituting a “Disposition” (in each case, permitted other than by reference to this Section 7.03 (or any clause hereof));
- (q) the exercise of any put or call arrangement in connection with the Specified Acquisition; *provided* that, to the extent the exercise of any such put or call arrangement constitutes an Investment by a Loan Party in a Subsidiary that is not a Loan Party in excess of \$50,000,000, such Investment in excess of \$50,000,000 must be otherwise permitted pursuant to this Section 7.03 (without reference to this clause (q));
- (r) to the extent constituting Investments, any Permitted Bond Hedge Transaction entered into in connection with Permitted Convertible Indebtedness permitted by Section 7.02(q);
- (s) Guarantees permitted by Section 7.02 (other than by reference to this Section 7.03 (or any clause hereof));
- (t) any other Investment; *provided, that*, (i)(A) to the extent that such Investment is made in connection with a Limited Condition Acquisition, (1) no Event of Default shall exist as of the date the definitive acquisition agreement for such Limited Condition Acquisition is entered into and (2) immediately prior to, and after giving effect to such Investment, no Specified Event of Default shall have occurred and be continuing or would result therefrom and (B) in the case of any other Investment, no Event of Default shall then exist or would exist immediately after giving effect thereto and (ii) the Consolidated Total Net Leverage Ratio is less than 2.50 to 1.0, calculated as of the most recent Measurement Period after giving effect to such Investment on a Pro Forma Basis;
- (u) Guarantees of the Borrower or any Subsidiary in respect of leases (other than Capital Leases) or other obligations of the Borrower or any other Subsidiary that do not constitute Indebtedness, in each case entered into in the ordinary course of business;  
~~and~~

(v) Investments made in connection with any Permitted Supply Chain Financing; and

(v) other Investments in an aggregate amount at any one time outstanding not to exceed \$10,000,000; *provided, that*, no Event of Default shall have occurred and be continuing at the time of such Investment or would result therefrom.

**7.04** **Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person; *provided, that*, notwithstanding the foregoing provisions of this Section 7.04 but subject to the terms of Sections 6.12 and 6.13, (a) the Borrower may merge or consolidate with any of its Subsidiaries provided that the Borrower shall be the continuing or surviving Person, (b) any Loan Party other than the Borrower may merge or consolidate with any other Loan Party other than the Borrower, (c) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any Loan Party provided that such Loan Party shall be the continuing or surviving Person, (d) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any other Subsidiary that is not a Loan Party, and (e) any Subsidiary may dissolve, liquidate or wind up its affairs at any time; *provided, that*, (i) such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect and (ii) any assets of such Subsidiary or any distribution from such dissolution, liquidation or winding up, as applicable, are distributed to one or more Loan Parties, or if such Subsidiary is owned by a non-Loan Party and is itself not a Loan Party, distributed to any other Subsidiary.

**7.05** **Dispositions.**

Make any Disposition except for Permitted Transfers.

**7.06** **Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) each Subsidiary may make Restricted Payments to the Borrower or any other Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;
- (b) the Borrower may declare and make dividend payments or other distributions payable solely in Qualified Equity Interests of such Person;
- (c) the Borrower may make cashless repurchases of its Equity Interests deemed to occur upon the exercise, purchase or settlement of stock options or other stock-based equity awards if such Equity Interests represent a portion of the exercise or purchase price and any applicable tax withholdings of such options or other stock-based equity awards;
- (d) the Borrower may make cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower;
- (e) the Borrower may make other Restricted Payments in an aggregate amount not to exceed \$250,000,000 during the term of this Agreement; *provided, that*, no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom; *provided, further, that*, after the Borrower has made \$250,000,000 of Restricted Payments in

reliance on this clause (e), the Borrower may make additional Restricted Payments in reliance on this clause (e) in an aggregate amount during the term of this Agreement not to exceed seventy-five percent (75%) of Consolidated EBITDA for the four (4) fiscal quarter period most recently ended for which financial statements have been delivered pursuant to Section 6.01(a) or (b), so long as (x) no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom and (y) the Consolidated Total Net Leverage Ratio is less than 2.25 to 1.0, calculated as of the most recent Measurement Period after giving effect to such Restricted Payment on a Pro Forma Basis;

- (f) to the extent constituting Restricted Payments, the Borrower or any Subsidiary may enter into and consummate transactions expressly permitted by any provision of Section 7.03 or Section 7.04 (in each case, permitted other than by reference to this Section 7.06 (or any clause hereof));
- (g) the Borrower and each Subsidiary may redeem or repurchase Equity Interests or other stock-based awards under any stock option plan, incentive plan, compensation plan or other benefit plan from officers, employees, consultants and directors of the Borrower or any of its Subsidiaries (or their estates, spouses or former spouses) upon the death, permanent disability, retirement or termination of service of any such Person or otherwise, so long as (i) no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom and (ii) the aggregate amount of Restricted Payments made in reliance on this clause (g) in any fiscal year does not exceed the sum of (x) \$10,000,000 plus (y) the net cash proceeds received by the Borrower or any Subsidiary of any “key-man” life insurance policies of the Borrower or any Subsidiary that have not been used to make any Restricted Payments under this Section 7.06(g) and are Not Otherwise Applied;
- (h) the Borrower may make cashless repurchases of its Equity Interests in the ordinary course of business deemed to occur upon the exercise of stock options or warrants if such Equity Interests are applied in payment of all or a portion of the exercise price of such options or warrants or tax withholding obligations with respect thereto; and
- (i) the Borrower may pay cash dividends to the holders of its Equity Interests within sixty (60) days after the date of their declaration if such dividends could have been paid on the date of their declaration in compliance with this Section 7.06.

#### **7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date, similar, related, ancillary or complementary (including synergistically) businesses and reasonable extensions, developments and expansions thereof.

#### **7.08 Transactions with Affiliates.**

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person (other than (a) transactions solely between or among Loan Parties (including any entity that becomes a Guarantor as a result of such transaction) and (b) transactions solely between or among Subsidiaries that are not Loan Parties) other than upon fair and reasonable terms and conditions not materially less favorable to such Person (or, in the case of a transaction between a Loan Party and a Subsidiary that is not a Loan Party, such Loan Party) than would be obtained by such Person in a comparable arm’s length transaction with a Person other than an officer, director or Affiliate, except that the following shall be permitted:



- (a) intercompany transactions expressly permitted by this Agreement;
- (b) reasonable and customary compensation and reimbursement of expenses of officers, directors and employees (including bonuses) and other benefits (including, without limitation, retirement, health, stock option and other benefit plans), indemnification arrangements and severance agreements;
- (c) reasonable and customary indemnities provided to, and reasonable and customary fees and reimbursements paid to, members of the board of directors, board of managers or equivalent governing body, as applicable, of the Borrower and any Subsidiary;
- (d) transactions set forth on Schedule 7.08; and
- (e) issuances, repurchases, redemptions, retirements or other acquisitions or retirement of Equity Interests of the Borrower or any Subsidiary and other Restricted Payments to the extent permitted under Section 7.06 and loans, and other transactions by and among the Borrower and/or one or more Subsidiaries, in each case, to the extent otherwise permitted under, and subject to the limitations otherwise contained in, Article VII.

**7.09 Burdensome Agreements.**

Enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any such Person to (a) make Restricted Payments to any Loan Party, (b) pay any Indebtedness or other obligations owed to any Loan Party, (c) make loans or advances to any Loan Party, (d) transfer any of its property to any Loan Party, (e) pledge its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (f) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (a) through (e) above) for (1) this Agreement and the other Loan Documents, (2) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary, (3) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 7.05 pending the consummation of such sale, (4) any agreement in effect at the time a Subsidiary becomes a Subsidiary, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary, (5) without affecting the Loan Parties' obligations under Section 6.12 and Section 6.13, customary provisions in Organization Documents, joint venture agreements, other similar agreements applicable to joint ventures and other non-Wholly Owned Subsidiaries permitted under Section 7.03 and applicable solely to such joint venture or non-Wholly Owned subsidiary and its equity, asset sale and stock sale agreements and other similar agreements entered into in the ordinary course of business, in each case, that restrict the transfer of ownership interests in or other rights in respect of such Person, (6) restrictions on cash or other deposits or net worth imposed by suppliers, landlords, customers, insurance and surety or bonding companies under contracts entered into in the ordinary course of business, (7) any instrument governing Indebtedness assumed in connection with any Permitted Acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, (8) any agreement relating to Indebtedness incurred pursuant to Section 7.02(c) to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (9) customary restrictions regarding licensing or sublicensing by the Borrower and its Subsidiaries of intellectual property in the ordinary course of business, (10) restrictions on cash earnest money deposits in favor of sellers in connection with acquisitions not prohibited hereunder, (11) restrictions in any agreement relating to Indebtedness of a Foreign Subsidiary that is not a Loan Party that is permitted by Section 7.02 and which does not apply to any Loan Party or any Domestic Subsidiary, so long as such restrictions do not impair the ability of the Loan Parties to perform their obligations under this Agreement and (12) solely in respect of the matters referenced in clauses (a) through (d) above and, to the extent such restrictions and

conditions apply only to Subsidiaries constituting Excluded Subsidiaries (other than a Subsidiary constituting an Excluded Subsidiary solely by virtue of clause (a) of the definition thereof), clause (e) above, restrictions and conditions arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred after the Closing Date to the extent such restrictions and conditions are not materially more restrictive, taken as a whole, to the Borrower and its Subsidiaries, than the restrictions and conditions in the Loan Documents (except for (A) covenants and events of default applicable only to periods after the then Latest Maturity Date or (B) unless the Borrower enters into an amendment to this Agreement with the Administrative Agent (which amendment shall not require the consent of any other Lender) to add such more restrictive terms for the benefit of the Lenders).

**7.10 Use of Proceeds.**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be less than 3.00 to 1.00.

(b) Consolidated Total Net Leverage Ratio. Permit the Consolidated Total Net Leverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower set forth below to be greater than the ratio set forth below opposite such period:

<u>Measurement Period Ending</u>	<u>Maximum Consolidated Total Net Leverage Ratio</u>
<u>September 30, 2021 through and including June 30, 2022</u>	<u>3.00 to 1.00</u>
<u>September 30, 2022 through and including March 31, 2023</u>	<u>3.50 to 1.00</u>
<u>June 30, 2023 and each fiscal quarter thereafter</u>	<u>3.00 to 1.00</u>

~~(b) Consolidated Total Net Leverage Ratio. Permit the Consolidated Total Net Leverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be greater than 3.00 to 1.00; provided, that, upon the occurrence of a Qualified Acquisition, for each of the four (4) fiscal quarters of the Borrower immediately following such Qualified Acquisition (including the fiscal quarter in which such Qualified Acquisition was consummated), the maximum Consolidated Total Net Leverage Ratio permitted pursuant to this Section 7.11(b) shall be increased to 3.50 to 1.00 (a “Leverage Increase Period”); provided, further, that, (xi) no Leverage Increase Period may occur until the Borrower has delivered Compliance Certificates for two (2) consecutive fiscal quarters ending after the fiscal quarter ending September 31, 2023 evidencing that the Consolidated Total Net Leverage Ratio was not greater than 3.00 to 1.00 as of the end of each such fiscal quarter, (ii) following the expiration of any Leverage Increase Period, the maximum Consolidated Total Net Leverage Ratio cannot be subsequently increased again as a result of a subsequent Qualified Acquisition (and a subsequent Leverage Increase Period cannot commence) until the Borrower has delivered Compliance Certificates for two (2) consecutive fiscal quarters evidencing that the Consolidated Total Net Leverage Ratio was not greater than 3.00 to~~

1.00 as of the end of each such fiscal quarter, (yiii) there shall be no more than three (3) Leverage Increase Periods exercised during the term of this Agreement, and (ziv) each Leverage Increase Period shall only apply with respect to the calculation of this financial maintenance covenant and not for any other purpose.

**7.12 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.**

- (a) Amend any of its Organization Documents in a manner materially adverse to the Lenders;
- (b) without the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), change its fiscal year (it being understood that if such fiscal year is so changed, the Borrower and the Administrative Agent shall, and are hereby authorized by the Lenders to, make any amendments to this Agreement that are necessary, in the judgment of the Administrative Agent and the Borrower to reflect such change in fiscal year);
- (c) without giving written notice thereof to the Administrative Agent within fifteen (15) days after the occurrence thereof (or such extended period of time as agreed to by the Administrative Agent), change its name, state of formation, form of organization or principal place of business; or
- (d) make any change in accounting policies or reporting practices, in each case, except as required by GAAP or in a manner not materially adverse to the Lenders.

**7.13 Prepayments, Etc. of Indebtedness; Payment of Earn Out Obligations.**

Make any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of (x) any Indebtedness of any Loan Party or any Subsidiary that is expressly subordinated in right of payment to the Secured Obligations (including, for the avoidance of doubt, any Permitted Subordinated Debt) or (y) any Indebtedness secured by Liens on the Collateral junior to those created under the Collateral Documents (any such Indebtedness described in clauses (x) or (y) being a “Junior Financing”), except:

- (a) the Borrower and its Subsidiaries may consummate any Permitted Refinancing permitted pursuant to Section 7.02 of a Junior Financing;
- (b) the Borrower may convert or exchange any Junior Financing into or for, as the case may be, Qualified Equity Interests of the Borrower and, in the case of a conversion of Permitted Convertible Indebtedness, the payment of any cash in lieu of fractional shares of the Qualified Equity Interests of the Borrower;
- (c) provided no Default shall have occurred and be continuing or shall be caused thereby, the Borrower and its Subsidiaries may make prepayments, redemptions, purchases, defeasances and other payments in respect of any Junior Financing (other than any such payment constituting a Restricted Payment) prior to its scheduled maturity, in an aggregate amount for all such prepayments, redemptions, purchases, defeasances and other payments made in reliance on this clause (c) not to exceed \$15,000,000 in any fiscal year; and
- (d) the Borrower and its Subsidiaries may make any prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings (other than any such

payment constituting a Restricted Payment) prior to the scheduled maturity thereof provided the Consolidated Total Net Leverage Ratio is less than 2.25 to 1.0 calculated as of the most recent Measurement Period after giving effect to such prepayment, redemption, defeasance or other payment on a Pro Forma Basis; *provided, further, that*, (i) no Default shall have occurred and be continuing or shall be caused thereby and (ii) the aggregate amount of all such prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings made in reliance on this clause (d), shall not exceed \$100,000,000 during the term of this Agreement.

**7.14                    Sale and Leaseback Transactions.**

Enter into any Sale and Leaseback Transaction (other than any Permitted Sale and Leaseback Transaction).

**7.15                    Sanctions.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, or otherwise) of Sanctions.

**7.16                    Anti-Corruption Laws.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose that would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions applicable to the Borrower or its Subsidiaries.

**ARTICLE VIII**

**EVENTS OF DEFAULT AND REMEDIES**

**8.01                    Events of Default.**

Any of the following shall constitute an event of default (each, an “*Event of Default*”):

- (a)                    Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or
- (b)                    Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05(a) (solely with respect to the legal existence of the Borrower), 6.08, 6.10, or 6.11, Article VII or Article X; or
- (c)                    Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of

(i) written notice thereof from the Administrative Agent to the Borrower and (ii) any Loan Party becoming aware thereof; or

- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (without duplication of any applicable materiality qualifications with respect thereto) when made or deemed made; or
- (e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs (excluding, in the case of any Permitted Convertible Indebtedness, any event or condition that would permit the holder or beneficiary of such Permitted Convertible Indebtedness to convert such Permitted Convertible Indebtedness into cash, Equity Interests of the Borrower or a combination thereof, in each case to the extent permitted hereunder, in any case, other than as a result of any default or event of default by the Borrower or any Subsidiary thereunder and other than as a result of a “change of control”, “fundamental change” or similar occurrence), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or Cash Collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or
- (f) Insolvency Proceedings, Etc. Any Loan Party or any Material Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or
- (g) Inability to Pay Debts; Attachment. i) Any Loan Party or any Material Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or

levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

- (h) Judgments. There is entered against any Loan Party or any Material Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of sixty (60) consecutive days during which such judgment shall remain undischarged and not be effectively stayed or bonded; or
- (i) ERISA. Except as could not reasonably be expected to result in a Material Adverse Effect, (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower or any ERISA Affiliate under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or
- (j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any provision of any material Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any material Loan Document; or it is or becomes unlawful for a Loan Party to perform any of its payment obligations under the Loan Documents; or
- (k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on any material portion of the Collateral (except to the extent not required to be valid or perfected by the Loan Documents) purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens, except (i) as a result of the Disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, and (ii) as a result of the Administrative Agent's or any Lender's failure to maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Collateral Documents; or
- (l) Change of Control. There occurs any Change of Control.

Without limiting the provisions of Article IX, if a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion)) as determined in accordance with Section 11.01; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the requisite Appropriate Lenders or by the Administrative Agent with the approval of the requisite Appropriate Lenders, as required hereunder in Section 11.01.

## **8.02 Remedies upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and
- (d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or Applicable Law or equity;

*provided, however*, that upon the occurrence of an event described in Section 8.01(f) with respect to the Borrower, the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

## **8.03 Application of Funds.**

- (a) After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this *Second* clause payable to them;

*Third*, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Secured

Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this Third clause payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Borrowings and Secured Obligations then owing under any the Secured Hedge Agreements and Secured Cash Management Agreements and to the to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.14, in each case ratably among the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this Fourth clause held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

- (b) Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to the Fourth clause above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section 8.03.
- (c) Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### **9.01 Appointment and Authority.**

- (a) Appointment. Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a



matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

- (b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02** Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

**9.03** Exculpatory Provisions.

- (a) The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable, and its Related Parties:
- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
  - (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

- (iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or the L/C Issuer any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.
- (b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.
- (c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.
- (d) Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

#### **9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer

unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

#### **9.05                    Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06                    Resignation of Administrative Agent.**

(a)                    Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “*Resignation Effective Date*”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. On or before the date on which any successor or replacement Administrative Agent becomes the Administrative Agent hereunder, it shall deliver to the Borrower two executed copies of either (a) IRS Form W-9 or (b) with respect to amounts received on its own account, IRS Form W-8ECI and with respect to amounts received on account of any Lender, IRS Form W-8IMY certifying that it is a U.S. branch that has agreed to be treated as a U.S. Person for U.S. federal tax purposes or a qualified intermediary that has agreed to assume primary withholding obligations for Chapter 3 and Chapter 4 of the Code with respect to payments received by it from the Borrower in its capacity as Administrative Agent, as applicable.

(b)                    Defaulting Lender. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such

appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

- (c) Effect of Resignation. With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (A) while the retiring Administrative Agent was acting as Administrative Agent and (B) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (1) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (2) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.
- (d) L/C Issuer and Swingline Lender. Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swingline Lender. If Bank of America resigns as the L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue Letters of Credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements

satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**9.07 Non-Reliance on Administrative Agent, the Arranger and the Other Lenders.**

Each Lender and the L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Arranger, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.**

- (a) In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall

have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 2.10(b) and 11.04) allowed in such judicial proceeding; and
- (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

- (b) Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.
- (c) The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders,

irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 11.01 of this Agreement), (C) the Administrative Agent shall be authorized to assign the relevant Secured Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Secured Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (D) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders *pro rata* and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### **9.10 Collateral and Guaranty Matters.**

- (a) Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,
- (i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) as permitted pursuant to Section 6.13(c)(ii) and Section 10.12, or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;
  - (ii) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and
  - (iii) to release any Guarantor from its obligations under the Guaranty (A) if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents or (B) as otherwise permitted pursuant to Section 10.12.
- (b) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.
- (c) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any

certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements.**

Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

**9.12 Certain ERISA Matters.**

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:
- (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments, or this agreement,
  - (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
  - (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84–14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in,



administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## ARTICLE X

### CONTINUING GUARANTY

#### **10.01** Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations (for each Guarantor, subject to the proviso in this sentence, its "*Guaranteed Obligations*"); *provided* that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

**10.02**                    **Rights of Lenders.**

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

**10.03**                    **Certain Waivers.**

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by Applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

**10.04**                    **Obligations Independent.**

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**10.05**                    **Subrogation.**

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

**10.06**                    **Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their reasonable discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this Section 10.06 shall survive termination of this Guaranty.

**10.07**                    **Stay of Acceleration.**

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

**10.08**                    **Condition of Borrower.**

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

**10.09**                    **Appointment of Borrower.**

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

**10.10**                    **Right of Contribution.**

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Law.

**10.11**                    **Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.11 shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 10.11 to constitute, and this Section 10.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

**10.12**                    **Release of Guarantor.**

If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, shall automatically be discharged and released, and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document shall be automatically released, in each case, without any further action by any Secured Party or any other Person effective as of the time of such sale or disposition, and the Administrative Agent agrees to take all actions reasonably requested by the Borrower or such Guarantor to evidence the discharge and release of such Guarantor; provided that, in each case, (a) any such action shall be without recourse to, or representation or warranty by, the Administrative Agent, and (b) any document executed by the Administrative Agent shall be in form and substance reasonably satisfactory to the Administrative Agent.

**ARTICLE XI**

**MISCELLANEOUS**

**11.01**                    **Amendments, Etc.**

(a) Subject to Section 3.03(c), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

- (i) waive any condition set forth in Section 4.02, or, in the case of the initial Credit Extension, Section 4.01, without the written consent of each Lender;
- (ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section

4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

- (iii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;
- (iv) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; *provided, however*, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate, or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;
- (v) change Section 8.03 or Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender affected thereby;
- (vi) change any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (vii) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;
- (viii) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);
- (ix) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender; or
- (xii) directly and materially adversely affect the rights of Lenders holding Commitments or Loans of one Class differently from the rights of Lenders holding Commitments or Loans of any other Class without the written consent of Lenders holding a majority of the outstanding Loans and Commitments of such applicable Class;

and *provided, further*, that (A) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (B) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (C) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect

the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (D) the Engagement Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; and (E) in order to implement any additional Commitments in accordance with Section 2.02(g) in connection with any Incremental Facility, this Agreement may be amended for such purpose (but solely to the extent necessary to implement such additional Commitments and otherwise in accordance with Section 2.02(g)) by the Loan Parties, the Administrative Agent and each Lender providing a portion of such Incremental Facility.

- (b) Notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.
- (c) Notwithstanding anything to the contrary herein, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.
- (d) Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

#### **11.02 Notices; Effectiveness; Electronic Communications.**

- (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:
- (i) if to the Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address(es), fax number(s), e-mail address(es) or telephone number(s) specified for such Person on Schedule 1.01(a); and

- (ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Electronic Communications.

- (i) Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging, and Internet or intranet websites) pursuant to an electronic communications agreement (or such other procedures approved by the Administrative Agent in its sole discretion); *provided* that the foregoing shall not apply to notices to any Lender, the Swingline Lender or the L/C Issuer pursuant to Article II if such Lender, the Swingline Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

- (ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (B) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; *provided* that for both clauses (A) and (B), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

- (c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS,

IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “*Agent Parties*”) have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

- (d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and Applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.
- (e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03 No Waiver; Cumulative Remedies; Enforcement.**

- (a) No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.
- (b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan



Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**11.04 Expenses; Indemnity; Damage Waiver.**

- (a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including, but not limited to, (A) the reasonable fees, charges and out-of-pocket disbursements of one primary counsel for the Administrative Agent and its Affiliates, taken as a whole, and, if and to the extent deemed reasonably necessary by the Administrative Agent, one special and/or local counsel to the Administrative Agent and its Affiliates, taken as a whole, in each relevant specialty or jurisdiction, as applicable, and (B) due diligence expenses), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (limited, in the case of legal fees and disbursements, to the reasonable fees and disbursements of (x) one primary counsel to the Administrative Agent, the L/C Issuer and the Lenders, taken as whole (and, in the case of any actual or potential conflict of interest, one additional counsel to each group of similarly situated persons, taken as a whole), and (y) if and to the extent deemed reasonably necessary by the Administrative Agent, one special and/or local counsel to the Administrative Agent, the L/C Issuer and the Lenders, taken as a whole, in each relevant specialty or jurisdiction, as applicable (and, in the case of any actual or potential conflict of interest, one additional special and/or local counsel to each group of similarly situated persons, taken as a whole, in each applicable specialty or jurisdiction, as applicable)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.
- (b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee")

against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of legal fees and disbursements, to the reasonable fees and out-of-pocket disbursements of (x) one primary counsel to the Indemnitees, taken as a whole (and, in the case of any actual or potential conflict of interest, one additional counsel to each group of similarly situated Indemnitees, taken as a whole), and (y) if and to the extent deemed reasonably necessary, one special and/or local counsel to the Indemnitees, taken as a whole, in each relevant specialty or jurisdiction, as applicable, (and, in the case of any actual or potential conflict of interest, one additional special and/or local counsel to each group of similarly situated Indemnitees, taken as a whole, in each applicable specialty or jurisdiction, as applicable)), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned, leased or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach of such Indemnitee's funding obligations or other material obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (z) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Arranger or the Administrative Agent in their capacities as such). Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

- (c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under clauses (a) or (b) of this Section 11.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided*, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the

Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

- (d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. To the fullest extent permitted by applicable Law, no Indemnitee shall assert, and each Indemnitee party hereto hereby waives, and acknowledges that no other Person shall have, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided, that, the foregoing shall in no event limit the Borrower's indemnification obligations under this Section 11.04 to the extent such special, indirect, consequential or punitive damages are included in any third-party claim in connection with which such Indemnitee is otherwise entitled to indemnification hereunder. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.
- (e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor.
- (f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **11.05 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**Successors and Assigns.**

- (a) **Successors and Assigns Generally.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this clause (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); *provided* that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:
- (i) **Minimum Amounts.**
- (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 11.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
- (B) in any case not described in clause (b)(i)(A) of this Section 11.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or \$1,000,000, in the case of any assignment in respect of the Term Facility or the Incremental Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed).
- (ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under

this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (b)(ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

- (iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section 11.06 and, in addition:
- (A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof (such notice to the Borrower to be made, for the avoidance of doubt, in accordance with the provisions of Section 11.02);
  - (B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of (1) any unfunded Incremental Term Commitment or any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Incremental Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and
  - (C) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.
- (iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.
- (v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons).
- (vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed

by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this clause (b)(vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

- (vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).
- (c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and interest amounts) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.
- (d) Participations.
- (i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain

solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

- (ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(f) (it being understood that the documentation required under Section 3.01(f) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06; *provided* that such Participant (A) shall be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under clause (b) of this Section 11.06 and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and interest amounts) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.
- (e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swingline Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(f)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, and the acceptance of such appointment by such successor L/C Issuer or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

(g) Disqualified Institutions.

(i) No assignment shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the applicable Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment as otherwise contemplated by this Section 11.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Borrower's prior consent in violation of clause (i) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans or Incremental Term Loans held by Disqualified Institutions, prepay such Term Loan or Incremental Term Loans by paying the *lesser of* (1) the principal amount thereof and (2) the amount that such Disqualified Institution paid to acquire such Term Loans or Incremental Term Loans, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents and/or (C) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the *lesser of* (1) the principal amount thereof and (2) the amount that such Disqualified Institution paid to acquire such



interests, rights and obligations, in each case *plus* accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and other the other Loan Documents; provided, that, (x) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b), (y) such assignment does not conflict with Applicable Laws and (z) in the case of clause (B), the Borrower shall not use the proceeds from any Loans to prepay Term Loans or Incremental Term Loans held by Disqualified Institutions.

- (iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (1) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (2) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (3) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (1) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (2) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws ("Plan of Reorganization"), each Disqualified Institution party hereto hereby agrees (I) not to vote on such Plan of Reorganization, (II) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (I), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (III) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (II).
- (iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower (collectively, the "DQ List") on the Platform, including that portion of the Platform that is designated for "public side" Lenders or (B) provide the DQ List to each Lender requesting the same.

#### **11.07 Treatment of Certain Information; Confidentiality.**

- (a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the

same as those of this Section 11.07, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (viii) with the consent of the Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section 11.07 or (2) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

- (b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with Applicable Law, including United States federal and state securities Laws.
- (c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event (other than in connection with any required SEC filings), the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.
- (d) Customary Advertising Material. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

#### **11.08 Right of Setoff**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Required Lenders to the fullest extent permitted by Applicable Law to set off and

apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, the L/C Issuer or such Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; *provided* that if any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have under Applicable Law. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **11.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **11.10 Counterparts; Integration; Effectiveness.**

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (*e.g.*, "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

**11.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**11.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**11.13 Replacement of Lenders.**

(a) If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

- (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);
- (ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (iv) such assignment does not conflict with Applicable Laws; and

- (v) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.
- (b) A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.
- (c) Each party hereto agrees that (i) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided, that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, *provided further* that any such documents shall be without recourse to or warranty by the parties thereto.
- (d) Notwithstanding anything in this Section 11.13 to the contrary, (A) the Lender that acts as the L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to the L/C Issuer or the depositing of Cash Collateral into a Cash Collateral account in amounts and pursuant to arrangements reasonably satisfactory to the L/C Issuer) have been made with respect to such outstanding Letter of Credit and (B) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

**11.14 Governing Law; Jurisdiction; Etc.**

- (a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
- (b) SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO ENFORCEMENT OF LIENS ON COLLATERAL UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL IS LOCATED.

- (c) WAIVER OF VENUE. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (b) OF THIS SECTION 11.14. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.
- (d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**11.15** Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

**11.16** Subordination.

Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and

the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Event of Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to intercompany Indebtedness; *provided*, that in the event that any Loan Party receives any payment of any intercompany Indebtedness at a time when such payment is prohibited by this Section 11.16, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

**11.17**                    **No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders and their respective Affiliates are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders and their respective Affiliates, on the other hand, (ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent, the Arranger and each Lender and each of their respective Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, the Arranger, nor any Lender nor any of their respective Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arranger, nor any Lender nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger, the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**11.18**                    **Electronic Execution; Electronic Records.**

- (a)                    The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; ***provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent***

*pursuant to procedures approved by it, provided, further, without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.* For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Secured Parties of a manually signed paper document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication") which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

- (b) The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the other Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and the other Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent's and each Lender's normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals.

**11.19 USA Patriot Act Notice.**

Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

**11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an Affected Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
- (i) a reduction in full or in part or cancellation of any such liability;



- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**11.21 Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

**11.22 ENTIRE AGREEMENT.**

**THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

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Annex B

Amended Exhibit G to Credit Agreement

**EXHIBIT G**

**[FORM OF]  
LOAN NOTICE**

TO: Bank of America, N.A., as Administrative Agent

RE: Credit Agreement, dated as of September 3, 2021 by and among Corsair Gaming, Inc., a Delaware corporation (the "Borrower"), the Guarantors, the Lenders and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swingline Lender (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

EFFECTIVE DATE: [Date<sup>1</sup>]

The Borrower hereby requests the following<sup>2</sup>:

[Revolving Facility]

<u>Indicate:</u> Borrowing or Conversion or Continuation	<u>Indicate:</u> Requested Amount	<u>Indicate:</u> Base Rate Loan or BSBY Rate Loan	For BSBY Rate Loans <u>Indicate:</u> Interest Period (e.g. 1, 3 or 6 month interest period)

[Term Facility]

<sup>1</sup> All requests submitted under a single Loan Notice must be effective on the same date. If multiple effective dates are needed, multiple Loan Notices will need to be prepared and signed.

<sup>2</sup> For multiple borrowings, conversions and/or continuations for a particular facility, fill out a new row for each borrowing/conversion and/or continuation.

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<u>Indicate:</u> Borrowing or Conversion or Continuation	<u>Indicate:</u> Requested Amount	<u>Indicate:</u> Base Rate Loan or BSBY Rate Loan	For BSBY Rate Loans <u>Indicate:</u> Interest Period (e.g. 1, 3 or 6 month interest period)

[The Revolving Borrowing requested herein complies with the proviso to the first sentence of Section 2.01(b) of the Credit Agreement.]<sup>3</sup>

The Borrower hereby represents and warrants that the conditions specified in Section 4.02 of the Credit Agreement shall be satisfied on and as of the date of the Effective Date.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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<sup>3</sup> Include this sentence in the case of a Revolving Borrowing.

**CORSAIR GAMING, INC.,**  
a Delaware corporation

By:  
Name:  
Title:

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Annex C

Amended Exhibit N to Credit Agreement

**EXHIBIT N**

**[FORM OF]  
NOTICE OF LOAN PREPAYMENT**

TO: Bank of America, N.A., as Administrative Agent and Swingline Lender

RE: Credit Agreement, dated as of September 3, 2021 by and among Corsair Gaming, Inc., a Delaware corporation (the "Borrower"), the Guarantors, the Lenders and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swingline Lender (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

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The Borrower hereby notifies the Administrative Agent that on [\_\_\_\_\_]4 pursuant to the terms of Section 2.05 (Prepayments) of the Credit Agreement, the Borrower intends to prepay/repay the following Loans as more specifically set forth below5:

[Revolving Loans]

<u>Indicate:</u> Requested Amount	<u>Indicate:</u> Base Rate Loan or BSBY Rate Loan	For BSBY Rate Loans <u>Indicate:</u> Interest Period (e.g. 1, 3 or 6 month interest period)

[Term Loans]

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4 Specify date of such prepayment.

5 Scheduled payments and advances should only be processed by auto debit, wire or to BAC's ACH account (**not** check or cashier's check). Unscheduled payments should only be received by wire or DDA transfers (**not** ACH or check or cashier's check).

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<u>Indicate:</u> Requested Amount	<u>Indicate:</u> Base Rate Loan or BSBY Rate Loan	For BSBY Rate Loans <u>Indicate:</u> Interest Period (e.g. 1, 3 or 6 month interest period)

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

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**CORSAIR GAMING, INC.,**  
a Delaware corporation

By:  
Name:  
Title:

**CORSAIR GAMING, INC.**  
**NON-EMPLOYEE DIRECTOR COMPENSATION POLICY**

Non-employee members of the board of directors (the “**Board**”) of Corsair Gaming, Inc. (the “**Company**”) shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Director Compensation Policy (this “**Policy**”). The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board, other than any individual who is (1) an employee of the Company or any parent or subsidiary of the Company or (2) serving on the Board as a stockholder representative (each, a “**Non-Employee Director**”), unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy became effective after the effectiveness of the Company’s initial public offering (the “**IPO**”) and shall remain in effect until it is revised or rescinded by further action of the Board. It was subsequently amended on April 21, 2022.

This Policy may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Policy shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors and between any subsidiary of the Company and any of its non-employee directors.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall receive an annual retainer of \$65,000 for service on the Board.

(b) Additional Annual Retainers. In addition, a Non-Employee Director shall receive the following annual retainers:

(i) Audit Committee. A Non-Employee Director serving as Chairperson of the Audit Committee shall receive an additional annual retainer of \$30,000 for such service. A Non-Employee Director serving as a member of the Audit Committee (other than the Chairperson) shall receive an additional annual retainer of \$15,000 for such service.

(ii) Compensation Committee. A Non-Employee Director serving as Chairperson of the Compensation Committee shall receive an additional annual retainer of \$20,000 for such service. A Non-Employee Director serving as a member of the Compensation Committee (other than the Chairperson) shall receive an additional annual retainer of \$10,000 for such service.

(iii) Nominating and Corporate Governance Committee. A Non-Employee Director serving as Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of \$12,500 for such service. A Non-Employee Director serving as a member of the Nominating and Corporate Governance Committee (other than the Chairperson) shall receive an additional annual retainer of \$7,500 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1 and 1(a) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth (15th) day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(a), for an entire calendar quarter, such Non-Employee Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Director for such calendar quarter pursuant to Sections 1 and 1(a), with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Director serves as a Non-Employee Director or in the applicable positions described in Section 1(a) during the applicable calendar quarter and the denominator of which is the number of days in the applicable calendar quarter.



2. Reimbursement. The Company shall reimburse each Non-Employee Director for all reasonable, documented, out-of-pocket travel and other business expenses incurred by such Non-Employee Director in the performance of his or her duties to the Company in accordance with the Company's applicable expense reimbursement policies and procedures as in effect from time to time.

3. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Company's 2020 Incentive Award Plan or any other applicable Company equity incentive plan then-maintained by the Company (such plan, as may be amended from time to time, the "Equity Plan") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all equity grants hereunder are subject in all respects to the terms of the Equity Plan. For the purposes of this Program, "Grant Date Value" shall mean the fair value of an option determined using the Black-Scholes pricing model with the volume weighted average trading price of a share of Company common stock on the stock exchange on which the Company's common stock is then listed or traded for the thirty (30) consecutive trading days ending on the trading day prior to the date of grant and the volatility, risk-free rate and life expectancy assumptions in the Company's most recent public filings disclosing those assumptions.

(a) IPO Awards. Each Non-Employee Director who (i) serves on the Board as of the date the IPO price of the shares of the Company's common stock is established in connection with the Company's IPO (the "Pricing Date") and (ii) will continue to serve as a Non-Employee Director immediately following the Pricing Date shall be automatically granted, on the Pricing Date, (A) an option to purchase a number of shares of common stock at a per-share exercise price equal to the IPO price per share of the Company's common stock that have an aggregate Grant Date Value on the date of grant of \$37,500 (subject to adjustment as provided in the Equity Plan) and (B) restricted stock units with an aggregate value on the date of grant of \$37,500 (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(a) shall be referred to herein as the "IPO Awards")

(b) Annual Awards. Each Non-Employee Director who (i) serves on the Board as of the date of any annual meeting of the Company's stockholders (an "Annual Meeting") after the Company consummates its initial public offering and (ii) will continue to serve as a Non-Employee Director immediately following such Annual Meeting shall be automatically granted,

on the date of such Annual Meeting, (A) an option to purchase a number of shares of common stock at a per-share exercise price equal to the closing price per share of the Company's common stock on the date of such Annual Meeting (or on the last preceding trading day if the date of the Annual Meeting is not a trading day) that have an aggregate Grant Date Value on the date of grant of \$100,000 (subject to adjustment as provided in the Equity Plan) and (B) restricted stock units with an aggregate value on the date of grant of \$100,000 (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 3(b) shall be referred to as the "Annual Awards." For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an Annual Meeting shall receive only an Annual Award in connection with such election, and shall not receive any Initial Award on the date of such Annual Meeting as well.

(c) Initial Awards. Except as otherwise determined by the Board, each Non-Employee Director who is initially elected or appointed to the Board after the Pricing Date on any date other than the date of an Annual Meeting shall be automatically granted, on the date of such Non-Employee Director's initial election or appointment (such Non-Employee Director's "**Start Date**"), (A) an award of an option to purchase shares of the Company's common stock (at a per-share exercise price equal to the closing price on the Company's common stock on such Non-Employee Director's Start Date (or on the last preceding trading day if the Start Date is not a trading day), that have an aggregate Grant Date Value on the date of grant of (i) \$50,000 (subject to adjustment as provided in the Equity Plan), multiplied by (ii) a fraction, the numerator of which is the number of days from the Start Date through the date of the next Annual Meeting and the denominator of which is 365, and (B) restricted stock units with an aggregate value on the date of grant of (i) \$50,000 (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan), multiplied by (ii) a fraction, the numerator of which is the number of days from the Start Date through the date of the next Annual Meeting and the denominator of which is 365. The awards described in this Section 2(c) shall be referred to as "**Initial Awards.**" Notwithstanding the foregoing, any Non-Employee Director who is appointed to the Board upon the IPO shall receive an IPO Award in lieu of an Initial Award. For the avoidance of doubt, no Non-Employee Director shall be granted more than one Initial Award or both an Initial Award and a IPO Award.

(d) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(c) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Annual Awards as described in Section 3(b) above.

(e) Vesting of Awards Granted to Non-Employee Directors. Each IPO Award and Initial Award shall vest and become exercisable on the first anniversary of the date of grant, subject to the Non-Employee Director continuing in service on the Board through the applicable vesting date. Each Annual Award shall vest and become exercisable on the earlier of (i) the day immediately preceding the date of the first Annual Meeting following the date of grant and (ii) the first anniversary of the date of grant, subject to the Non-Employee Director continuing in service on the Board through the applicable vesting date. No portion of an IPO Award, Annual Award or Initial Award that is unvested or unexercisable at the time of a Non-Employee Director's

termination of service on the Board shall become vested and exercisable thereafter. All of a Non- Employee Director's IPO Awards, Annual Awards and Initial Awards shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

\* \* \* \* \*

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Andrew J. Paul, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Corsair Gaming, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2022

By: \_\_\_\_\_  
/s/ Andrew J. Paul  
Andrew J. Paul  
Chief Executive Officer  
(Principal Executive Officer)



**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER****PURSUANT TO 18 U.S.C. SECTION 1350****AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Corsair Gaming, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2022 (the "Report"), Andrew J. Paul, Chief Executive Officer of the Company, and Michael G. Potter, Chief Financial Officer of the Company, each certify, to the best of his knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: August 4, 2022

By: \_\_\_\_\_  
/s/ Andrew J. Paul  
Andrew J. Paul  
Chief Executive Officer  
(Principal Executive Officer)

Date: August 4, 2022

By: \_\_\_\_\_  
/s/ Michael G. Potter  
Michael G. Potter  
Chief Financial Officer  
(Principal Financial Officer)

